

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

MICHAEL A. COX, Attorney General
of the State of Michigan, ex rel,
MICHIGAN DEPARTMENT OF ENVIRONMENTAL
QUALITY, and STEVEN CHESTER, Director
of the Department of Environmental
Quality,

Plaintiffs,

v.

FMB--FIRST MICHIGAN BANK, or
ITS SUCCESSOR, AS TRUSTEE OF
THE MARY A. WINDOLPH TRUST,

Defendant.

Case No. 1:88-cv-00097

Hon. Douglas W. Hillman

CONSENT DECREE

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<u>Appendix</u>	<u>Description</u>
A	Operation and Maintenance Plan and Compliance Monitoring Contingency Plan for the KHI Facility
B	Legal Description of the KHI Facility
C	Agreement and Covenant Not to Sue
D	Restrictive Covenant
E	Environmental Escrow Agreement

CONSENT DECREE

WHEREAS, on February 17, 1988, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed its Complaint in this action against Mary A. Windolph and FMB--First Michigan Bank, or its successor, as Trustee of the Herman J. Windolph Trust, and on May 2, 1988 filed its First Amended Complaint, against FMB--First Michigan Bank, or its successor, as Trustee of the Mary A. Windolph Trust ("Settling Defendant") pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a) and (g), alleging violations of Sections 3005(a) and 3005(e)(2) of RCRA, 42 U.S.C. §§ 6925(a) and (e)(2), and regulations promulgated thereunder, and requesting assessment of civil penalties and permanent injunctive relief at the KHI, Inc. facility in Holland Michigan, formerly known as Kent-Holland Die Casting & Plating, Inc. (the "KHI Facility") owned by the Mary A. Windolph Trust;

WHEREAS, on October 30, 1986, the Administrator of U.S. EPA granted final authorization to the State of Michigan to administer a hazardous waste program in lieu of the Federal program. As a result, generators, transporters, and treatment, storage, or disposal facilities are regulated under the provisions of the Michigan Administrative Code in lieu of those portions of RCRA for which the State is authorized. Section 3008 of RCRA, 42 U.S.C. § 6928, provides that U.S. EPA may enforce state regulations in those states authorized to administer a hazardous waste program;

WHEREAS, the State of Michigan (the "State") filed a Motion to Intervene on May 5, 1988, which was granted on June 8, 1988, which resulted in the filing of a Complaint in Intervention (hereinafter all references to the "Complaints" include the State's Complaint in Intervention);

WHEREAS, Settling Defendant filed its Answers on August 5, 1988;

WHEREAS, on July 2, 1990, the Court issued an Order and Opinion Granting Plaintiffs' Motion for Summary Judgment striking Defendant's Affirmative Defenses;

WHEREAS, Settling Defendant has implemented and completed the closure and corrective action requirements for the KHI Facility in accordance with the requirements of RCRA and Part 111 of the Michigan Natural Resources and Environmental Protection Act ("NREPA") and subject to the oversight and approval of U.S. EPA and the Michigan Department of Environmental Quality ("MDEQ"). The remaining post-closure related activities are set forth in the Operation and Maintenance Plan and the Compliance Monitoring Contingency Plan ("Work Plans"), attached at Appendix A;

WHEREAS, Settling Defendant has submitted to U.S. EPA and MDEQ a certification that the KHI Facility has been closed in accordance with RCRA and Part 111 of NREPA, as required by 40 C.F.R. § 265.115, and the MDEQ has approved the closure certification.

WHEREAS, Huntington National Bank is the successor by merger to FMB--First Michigan Bank;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of testimony, before adjudication of the merits, without this Consent Decree constituting an admission by Settling Defendant of liability for any of the allegations set forth in the Complaints or constituting evidence of the same, and upon the consent of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED, AND

DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355. The Complaints state claims upon which the Court may grant relief against Settling Defendant, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Venue is proper pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. § 1391(b).

II. DEFINITIONS

2. Unless otherwise stated, all terms used in this Consent Decree shall have the same meaning as used in RCRA, 42 U.S.C. §§ 6901-6992k, and the regulations promulgated thereunder, 40 C.F.R. Parts 260 through 271; CERCLA, 42 U.S.C. §§ 6901-6975, and the regulations promulgated thereunder; and Part 111 of NREPA, 1994 P.A. 451, as amended, Mich. Comp. Laws § 324.11101 et seq., Mich. Stat. Ann. § 13A.11101 et seq. The interim status requirements codified at 40 C.F.R. Part 265 have been adopted by reference in Michigan Administrative Code ("Mich. Admin. Code"), r 299. 9502 and r 299.11003(l)(p) and (q). Hereafter, only the Code of Federal Regulations citation is provided for the interim status requirements adopted by reference in the Mich. Admin. Code.

a. "ADW, L.L.C." shall mean a Michigan limited liability company whose address is 44 East 8th Street, Suite 510, Holland, Michigan 49423, which intends to purchase the KHI Facility from the Settling Defendant.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, this

Consent Decree shall control.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, and the regulations promulgated thereunder.

d. "Days" shall mean calendar days.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

f. "Escrowed Funds" shall mean the funds held in escrow pursuant to Paragraph 8 of this Consent Decree.

g. "Existing Contamination" shall mean:

- i. any Waste Material present or existing on or under the KHI Facility as of the effective date of this Agreement;
- ii. any Waste Material that migrated from the KHI Facility prior to the effective date of this Agreement; and
- iii. any Waste Material presently at the KHI Facility that migrates onto or under or from the KHI Facility after the effective date of this Agreement.

h. "KHI Facility" shall mean the facility, as defined at 40 C.F.R. § 260.10 and Mich. Admin. Code r. 299.9103(q), owned by the Trust at 582 East Lakewood Blvd., Holland, Michigan, also known as the Kent-Holland facility, and encompassing approximately seven acres, more or less, including the areas in which Waste Material has come to be located. The legal description of the KHI Facility is attached at Appendix B.

i. "MDEQ" shall mean the Michigan Department of Environmental Quality.

The State's Complaint was filed on behalf of the Michigan Department of Natural Resources ("MDNR"); however, since that date, the pertinent duties and responsibilities of the MDNR, have been transferred by executive order of the Governor of Michigan to the Michigan Department of Environmental Quality. Executive Order 1995-18.

j. "NREPA" shall mean the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Mich. Comp. Laws § 101 et seq.

k. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

l. "Parties" shall mean the United States, the State, and the Settling Defendant.

m. "Plaintiffs" shall mean the United States of America and the State of Michigan.

n. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-6992k, and the regulations promulgated thereunder.

o. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

p. "Settling Defendant" shall mean Huntington National Bank, as the successor to FMB--First Michigan Bank, as trustee of the Mary A. Windolph Trust.

q. "State" shall mean the State of Michigan, including its departments, agencies, and instrumentalities.

r. "Trust" shall mean the Mary A. Windolph Trust.

s. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

t. "United States" shall mean the United States of America, acting on behalf of U.S. EPA.

u. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under Section 20101(1)(t) of the NREPA, Mich. Comp. Laws § 324.20101(1)(t).

v. "Work" shall mean the remaining post-closure related activities set forth in the Work Plans.

w. "Work Plans" shall mean the Operation and Maintenance Plan and the Compliance Monitoring Contingency Plan, attached at Appendix A.

III. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendant and its successors and assigns. Settling Defendant enters into this Consent Decree solely as the trustee of the Trust, and the Settling Defendant's obligations are limited to overseeing and applying the Trust's assets to meet the requirements under this Consent Decree. Any change in ownership or corporate status of Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree as trustee for the Trust.

4. If the Settling Defendant proposes to sell or transfer the KHI Facility, or any

portion of it, or proposes to disburse any Trust assets to the beneficiaries of the Trust, all of the obligations of Settling Defendant under the Consent Decree shall continue until this Consent Decree is terminated as provided in Section XXII (Termination). Notwithstanding the foregoing, the Plaintiffs consent to the sale of the KHI Facility to ADW, L.L.C., pursuant to the Agreement and Covenant Not to Sue, which will be subject to public comment, and is attached at Appendix C.

IV. NOTICE OBLIGATIONS

5. Prior to any sale or transfer of the KHI Facility, or any portion of it, Settling Defendant shall provide a copy of this Consent Decree to any purchaser or transferee of the KHI Facility. Upon its execution of this Consent Decree, Settling Defendant shall also provide a copy of the Consent Decree to the beneficiaries of the Trust. The Settling Defendant shall also notify U.S. EPA, MDEQ, the Assistant Attorney General for the State, the United States Attorney for the Western District of Michigan, and the Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, in writing, at least thirty (30) days in advance of any proposed sale, transfer, or disbursement of Trust assets to the beneficiaries of the Trust at the addresses set forth in Section VIII (Submissions).

6. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and

subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

This Section does not relieve Settling Defendant of its obligations to comply with notice requirements under RCRA or equivalent State provisions, including, without limitation, 40 C.F.R. §§ 265.12 and 270.72 and Mich. Admin. Code r. 299.9501 and r 299.9513.

V. COMPLIANCE REQUIREMENTS

A. Closure Requirements.

7. Within twenty-one (21) days of the sale of the KHI Facility to ADW, L.L.C., Settling Defendant shall record, or cause to be recorded, the Restrictive Covenant, attached at Appendix D, with the Register of Deeds in the Recorder's Office for Ottawa County, Michigan. If the sale of the KHI Facility does not occur within sixty (60) days after entry of this Consent Decree, the Settling Defendant shall submit to the State a proposed Restrictive Covenant to be recorded in lieu of the Restrictive Covenant attached at Exhibit D, and shall record, or cause to be recorded, the Restrictive Covenant with the Register of Deeds in the Recorder's Office for Ottawa County, Michigan, within 21 days after the State approves the Restrictive Covenant.

B. Financial Requirements.

8. The principal asset of the Trust is the real property upon which the KHI Facility is located at 582 East Lakewood Boulevard, Holland, Michigan. The Trust's other asset is the potential right to a partial refund of federal estate taxes.

a. Within seven (7) days after the sale of the real property, and/or receipt of any tax refund, whichever comes first, the Settling Defendant may pay its previously incurred and unpaid expenses related to the closure of the facility, entry of this Consent Decree, application for estate tax refunds, and sale of the real property, including taxes related to the sale

of the real property, and shall deposit the net proceeds ("Net Proceeds") into the Environmental Escrow Account ("Escrow Account") created by the Environmental Escrow Agreement, attached at Appendix E, as financial assurance for the performance of the obligations under this Consent Decree, up to a maximum of \$350,000 (the "Initial Deposit"). All deposits into the Escrow Account are "Escrowed Funds."

b. The minimum amount of the Initial Deposit into the Escrow Account from the Net Proceeds shall be \$113,000, or the gross amount of any tax refund if that amount is less than \$113,000 and the property is not yet sold.

c. If the Initial Deposit to the Escrow Account is less than \$113,000, and the Trust subsequently receives sale or tax refund proceeds, within seven (7) days, the Settling Defendant shall deposit into the Escrow Account: (1) the lesser of the total amount of the gross proceeds or the amount of the gross proceeds necessary to bring the total amount of the deposits to \$113,000; and (2) any Net Proceeds, subject to the \$350,000 limit on the aggregate amount of deposits to the Escrow Account.

d. If the Initial Deposit to the Escrow Account is equal to or more than \$113,000, but less than \$350,000, and the Trust subsequently receives property sale or tax refund proceeds, within seven (7) days, the Settling Defendant shall deposit into the Escrow Account any Net Proceeds, subject to the \$350,000 limit on the aggregate amount of deposits to the Escrow Account.

e. In order to confirm that the Net Proceeds were placed in the Escrow Account, the Settling Defendant shall provide to Plaintiffs a written description of the sale or tax refund proceeds and the previously incurred and unpaid expenses, and, if requested by Plaintiffs,

reasonable supporting documentation.

f. If the Trust has or receives any property sale or tax refund proceeds after a total of \$350,000 has been deposited into the Escrow Account, the Settling Defendant may retain the proceeds and disburse them to the Trust beneficiaries after providing notice as required by Paragraph 5. The Settling Defendant must adhere to all of its fiduciary obligations arising from the Environmental Escrow Agreement.

9. The Settling Defendant may only disburse the Escrowed Funds to pay the necessary expenses to perform its obligations under this Consent Decree, including only those administrative and legal expenses for services performed after entry of this Consent Decree, in accordance with the provisions of 2.1-2.5 and 4.12 of the Environmental Escrow Agreement.

10. Upon termination of this Consent Decree, Settling Defendant may disburse to the beneficiaries of the Trust any Escrowed Funds from the Escrow Account deposited into the Trust upon termination of the Consent Decree.

C. Groundwater Monitoring.

11. Settling Defendant shall implement the Work Plans according to the terms and schedules described therein.

VI. CIVIL PENALTY

12. Within sixty (60) days after the sale of the real property, Settling Defendant shall pay from the Escrowed Funds a civil penalty of \$10,000. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Settling Defendant, following lodging of this Consent Decree, by the Financial Litigation Unit of the United States Attorney's Office for the Western District of

Michigan. At the time of payment, Settling Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-7-1-433 and the civil action number of this case, 1:88-cv-00097, to the United States in accordance with Section VIII (Submissions) of this Consent Decree.

VII. STIPULATED PENALTIES

13. In the event that Settling Defendant violates any of the requirements listed in subparagraphs (a) - (d) below, Settling Defendant shall pay a stipulated penalty, per day, per violation, according to the schedule below. However, stipulated penalties will accrue, but will not be assessed for payment, until the completion of the closure related obligations in Paragraphs 7-9 and 11 of this Consent Decree.

SCHEDULE:

- a. \$50 per day for each day that payment of the civil penalty in Paragraph 12 is late.
- b. \$50 per day for failure to record the Restrictive Covenant pursuant to Paragraph 7.
- c. \$50 per day for the first 60 days for failure to implement the Work Plans pursuant to Paragraph 11.
- d. \$100 per day after 60 days for failure to implement the Work Plans pursuant to Paragraph 11.

14. All stipulated penalties begin to accrue on the day following the day on which complete performance is due or a violation occurs, and continue to accrue through the day performance is completed or the violation is corrected. Stipulated penalties shall be assessed for payment as provided in Paragraph 13. However, stipulated penalties shall not accrue: (1) with respect to Plaintiffs' resolution of a dispute under Paragraph 29 of Section XII (Dispute

Resolution) during the period, if any, beginning on the 21st day after the date that Plaintiffs have received Settling Defendant's written notice of dispute until the date that the Plaintiffs issue a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section XII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute, until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

15. One-half of any required stipulated penalty payment shall be tendered to the United States by EFT in accordance with Paragraph 12 or by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing DOJ case number 90-7-1-433 and the United States Attorney's Office file number 1987v30931, and delivered to the Office of the United States Attorney, Western District of Michigan, Financial Litigation Unit, P.O. Box 208, 330 Ionia Ave., N.W., Suite 501, Grand Rapids, Michigan 49501-0208, within thirty (30) days after assessment for payment pursuant to Paragraph 13, or, if applicable, after resolution by the Court in accordance with Section XII (Dispute Resolution) of this Consent Decree. The other half of any required stipulated penalty payment shall be tendered to the MDEQ, Cashier's Office, P.O. Box 30657, 300 S. Washington Square, Suite 457, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this Consent Order must include Payment Identification Number WHM 2025. A copy of the transmittal documents and the checks shall be mailed to the United States and MDEQ at the addresses set forth in Section VIII (Submissions). The transmittal documents shall identify this action, the requirement of this Consent Decree with which the Settling Defendant failed to comply, the date(s) of non-

compliance, and the amount of payment.

16. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions, including contempt proceedings, which may be available to the Plaintiff(s) by reason of the Settling Defendant's failure to comply with the requirements of this Consent Decree, RCRA, Part 111 of NREPA, or any other federal or state law or regulation.

17. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that has accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse the Settling Defendant from payment of the civil penalty as required by Section VI or for performance of any other requirement of this Consent Decree.

18. Settling Defendant may dispute the imposition of stipulated penalties by invoking the dispute resolution procedures under Section XII of this Consent Decree, but such penalties shall continue to accrue during the pendency of a dispute, unless the Court orders otherwise.

VIII. SUBMISSIONS

19. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, RCRA Enforcement Branch (DRE-8J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Susan W. Prout (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
(cover letter only)

W. Francesca Ferguson
Assistant United States Attorney
Office of United States Attorney for
the Western District of Michigan
P.O. Box 208
Grand Rapids, MI 49501-0208
(cover letter and penalty payments only)

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(cover letter only)

To the State:

Andrew Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor South
P.O. Box 30426
Lansing, MI 48909

George Bruchmann, Chief
Waste and Hazardous Materials Division
Michigan Department of Environmental Quality
P.O. Box 30241
Lansing, MI 48909

To the Settling Defendant:

John Dunn
Warner, Norcross & Judd
900 Fifth Third Center
111 Lyon NW
Grand Rapids, MI 49503

20. Delivery shall be considered complete upon deposit of the document(s) or other required item(s) in the U.S. mail, certified mail with return receipt requested, or with a reputable delivery service.

21. All plans required by this Consent Decree shall become enforceable requirements of this Consent Decree upon approval by MDEQ and written notification of approval to the Settling Defendant.

IX. ACCESS TO THE KHI FACILITY AND SAMPLING

22. Until this Consent Decree is terminated pursuant to Section XXII (Termination), Settling Defendant agrees to provide U.S. EPA, MDEQ, their authorized representatives, and their contractors, access to the KHI Facility at all reasonable times for the purposes of inspecting, sampling, and evaluating compliance with the provisions of this Consent Decree, RCRA, and Part 111 of NREPA, including the right to photograph the KHI Facility, and review and copy sampling data and/or other records. In addition, laboratories used by the Settling Defendant or its contractors, agents, and other authorized representatives, shall be required by Settling Defendant to allow U.S. EPA, MDEQ, their authorized representatives, and their contractors to inspect these laboratories at all reasonable times. The Parties shall have the right to take splits of any samples taken in connection with the implementation of the Work Plans and this Consent Decree. Settling Defendant shall give U.S. EPA and MDEQ at least fourteen (14)

days notice prior to any groundwater sampling, and a minimum of two (2) days notice for any other sampling. Settling Defendant shall provide MDEQ with the results of all analyses within thirty (30) days after receiving the results from the laboratory.

23. This Section does not limit any right of entry available to U.S. EPA and MDEQ pursuant to applicable federal or state laws, regulations, or permits, including, but not limited to, Section 3007 of RCRA, 42 U.S.C. § 6927, and Section 11146 of Part 111 of NREPA, Mich. Comp. Laws § 324.11146.

X. REPORTING

24. Settling Defendant shall submit to U.S. EPA and MDEQ the reports required by the Work Plans pursuant to the schedules described therein.

XI. MODIFICATION

25. No requirement or provision of this Consent Decree shall be modified or revised except upon written agreement of the Parties and a subsequent order of this Court.

XII. DISPUTE RESOLUTION

26. The dispute resolution procedures in this Section shall be the exclusive mechanism to resolve disputes or differences of opinion relating to the conduct of activities under this Consent Decree. In the first instance, the Parties shall use their best efforts to resolve informally and in good faith all such disputes. If, however, disputes arise concerning this Consent Decree, including, but not limited to, the implementation of the Work Plans, approval of documents, scheduling of any Work, or any other obligations assumed under this Consent Decree that the Parties are unable to resolve informally, the Settling Defendant shall present a written notice of such dispute to the Plaintiffs within twenty (20) days of its knowledge of the

dispute. The written notice of dispute shall set forth the specific points of dispute, the position of the Settling Defendant and the basis therefore, and any actions that the Settling Defendant considers necessary to resolve the dispute.

27. Within twenty (20) days of receipt of a written notice from the Settling Defendant pursuant to Paragraph 26 above, Plaintiffs shall provide a written response to the Settling Defendant setting forth their position and the basis therefore. During the time period between receipt of the written notice from the Settling Defendant and issuance of Plaintiffs' written response, the Parties shall attempt to negotiate in good faith a resolution of the differences. This 20-day period may be extended by mutual written agreement of the Parties. MDEQ, in consultation with U.S. EPA, will issue the Plaintiffs' position on technical or regulatory issues for which MDEQ is authorized. In all other instances, U.S. EPA, in consultation with MDEQ, will present the Plaintiffs' position in disputes.

28. Following expiration of the time period described in Paragraph 27 above, if Plaintiffs concur with the position of the Settling Defendant, the dispute shall be deemed resolved in favor of the Settling Defendant. The Settling Defendant shall be provided with written notification of such dispute resolution, and this Consent Decree will be modified pursuant to Section XI (Modification) as necessary. No stipulated penalties will be due under these circumstances.

29. Following expiration of the time period described in Paragraph 27 above, if Plaintiff(s) do not concur with the position of the Settling Defendant, Plaintiff(s) shall resolve the dispute, based upon and consistent with the terms and objectives of this Consent Decree, and shall provide a written statement of the dispute resolution. Subject to Paragraph 32, Plaintiffs

written statement of dispute resolution shall be incorporated into this Consent Decree pursuant to Section XI (Modification).

30. During the pendency of the dispute resolution procedures set forth in this Section, the time period for completion of Work and/or obligations to be performed under this Consent Decree, which are affected by such dispute, may be extended, upon written agreement of the Parties, for a period of time not to exceed the actual time taken to resolve the dispute. Elements of the Work and/or obligations not affected by the dispute shall be completed in accordance with the schedules contained in the Work Plans or this Consent Decree.

31. Upon resolution by Plaintiff(s) of any dispute, whether informally or using the procedures of Paragraphs 27-29 of this Section, the Settling Defendant shall proceed with the Work and other obligations under this Consent Decree according to the statement of resolution which shall be incorporated into this Consent Decree pursuant to Section XI (Modification), unless Settling Defendant seeks judicial review in accordance with Paragraph 32.

32. Within fifteen (15) days after receipt of Plaintiffs' written response under Paragraph 27, Settling Defendant may file a petition for resolution with the Court setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Consent Decree. The filing of a petition asking the Court to resolve a dispute shall not of itself extend or postpone any Work or other obligation of Settling Defendant under this Consent Decree. Notwithstanding the invocation of dispute resolution, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree, unless the Court orders otherwise or Settling Defendant prevails in the dispute. In

proceedings on any dispute, the following standards of record review shall apply:

- a. as to any scientific or engineering aspects of any disputed issue relating to Plaintiffs' non-approval or conditional approval of an amended Closure or Post-Closure Plan, or the Work Plans, or other document/authorization requiring, as a matter of law, U.S. EPA review and approval, the appropriate standard shall be whether the Plaintiffs' position and/or reasoning are arbitrary, capricious, or contrary to law based on the administrative record;
- b. as to all other disputed matters brought before the Court for review, the appropriate standard shall be determined by applicable law.

For purposes of record review, the record shall consist of this Consent Decree, all documents prepared by the Parties in accordance with their obligations or responsibilities under the Consent Decree prior to the dispute, the Settling Defendant's written submissions, Plaintiffs' written responses, and all other written communications between the Parties during the period of dispute negotiation and dispute resolution, including all attachments to such written notices, responses, and communications.

XIII. FORCE MAJEURE

33. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant or any entity controlled by the Settling Defendant, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring

and (b) after it has occurred, such that the delay is minimized to the greatest extent possible.

"Force Majeure" does not include Settling Defendant's financial inability to complete the Work or normal precipitation events, provided, however, that exhaustion of the Escrowed Funds may provide the basis for termination of this Consent Decree pursuant to Paragraph 50.c.

34. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify U.S. EPA and the MDEQ in writing, as provided in Section VIII (Submissions), within seven (7) days after Settling Defendant first knew, or by the exercise of due diligence should have known, that the event might cause a delay. Such notification shall include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event, if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event. Settling Defendant shall be deemed to have notice of any circumstance about which any entity controlled by the Settling Defendant had or should have had notice. If Settling Defendant is unable to complete any part or all of the work in accordance with Section V (Compliance Requirements) or otherwise to comply with any provision of this

Consent Decree, including the Plan, as a result of any circumstance, whether or not such circumstance constitutes a force majeure event, the aforementioned notice requirements shall still apply. Such notification shall be promptly supplemented as additional information becomes available to Settling Defendant concerning the circumstances of the delay, measures taken or to be taken in response to the delay, revised schedules, and the basis for Settling Defendant's claim of force majeure. Settling Defendant shall adopt all reasonable measures to avoid or minimize any such delay. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties.

35. If the Parties agree that Settling Defendant could not have prevented or mitigated any delay, or anticipated delay, attributable to a force majeure event by the exercise of best efforts, the Parties shall stipulate to an extension of time for Settling Defendant's performance of the affected compliance requirement by a period not exceeding the delay actually caused by such event. Where the extension of time constitutes a material modification to a term of this Consent Decree or is a material modification of any appendix to this Consent Decree, the appropriate modification shall be made pursuant to Section XI (Modification). An extension of time for performance of the obligations affected by a force majeure event shall not, of itself, extend the time for performance of any other obligation.

36. In the event the Parties cannot agree that Settling Defendant could not have prevented or mitigated any delay, or anticipated delay, attributable to a force majeure event by the exercise of best efforts, the matter shall be resolved in accordance with Section XII (Dispute Resolution). Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence its claim that an event constituted a force majeure event; that Settling Defendant

gave notice required by Paragraph 34; that Settling Defendant exercised best efforts to avoid and mitigate the effects of any delay caused by the event; and that any period of delay it claims was attributable to the force majeure event was caused by that event. If the Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to Plaintiffs and the Court.

XIV. COVENANT NOT TO SUE BY PLAINTIFFS

37. In consideration of the actions that will be performed and the payment that will be made by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Section XV (Reservation of Rights by Plaintiffs), Plaintiffs covenant not to sue or take administrative action against Settling Defendant pursuant to 40 C.F.R. Part 265 Subpart G and Sections 3008 and 7003 of RCRA, 42 U.S.C. §§ 6928 and 6973, and Part 111 of NREPA for closure and corrective action related obligations at the KHI Facility, and Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Part 201 of NREPA with respect to Existing Contamination at the KHI Facility.

38. The covenants not to sue in Paragraph 37 shall take effect upon payment of the civil penalty pursuant to Paragraph 12 of this Consent Decree. These covenants are contingent upon the Settling Defendant's satisfactory compliance with its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.

XV. RESERVATION OF RIGHTS BY PLAINTIFFS

39. The covenants not to sue set forth in Paragraph 37 do not pertain to any matters other than those expressly specified therein. The Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including, but not limited to:

- a. claims based on a failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release or threat of release of Waste Material occurring at a facility other than the KHI Facility, but involving Waste Material originating from the KHI Facility;
- c. liability arising from exacerbation by Settling Defendant, its successors, assignees, contractors, subcontractors, representatives, lessees or sub-lessees, of Existing Contamination;
- d. liability arising from the release or threat of release of Waste Material not within the definition of Existing Contamination at the KHI Facility after the effective date of this Consent Decree;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. criminal liability; and
- g. liability for violations of federal, state, or local law that occur after entry of this Consent Decree.

40. The United States and the State reserve all legal and equitable remedies to address

any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the KHI Facility for Waste Material not included in the definition of Existing Contamination.

XVI. COVENANT NOT TO SUE BY SETTLING DEFENDANT

41. The Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of federal law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

42. The Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the State, or its contractors or employees, with respect to the Site or this Consent Decree, including, but not limited to any claims against any State hazardous substance fund under Part 111 of NREPA, Part 201 of NREPA, or other State laws.

43. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.700.

XVII. CONTRIBUTION PROTECTION

44. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C.

§ 9613(f)(2), or any other provision of law for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, subject to the United States’ Reservation of Rights in Section XV of this Consent Decree.

45. The Settling Defendant agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify the United States and the State in writing within ten (10) days of service of the complaint or claim upon it. In addition, the Settling Defendant shall notify the United States and the State within ten (10) days of service or receipt of any motion for summary judgment, and within ten (10) days of receipt of any order from any court setting a case for trial, for matters related to this Consent Decree.

XVIII. SEVERABILITY

46. It is the intent of the Parties that the provisions of this Consent Decree are severable and that if any provision is declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining provisions shall continue in full force and effect.

XIX. PUBLIC COMMENT

47. The Parties agree and acknowledge that final approval by the United States and

entry of this Consent Decree is subject to the public notice and comment requirements of 28 C.F.R. § 50.7. The United States reserves the right to withhold or withdraw its consent to entry of this Consent Decree if comments received disclose facts that lead the United States to conclude that the proposed Consent Decree is inappropriate, improper, or inadequate.

XX. CONTINUING JURISDICTION OF THE COURT

48. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising under it as may be necessary or appropriate for the construction or execution of this Consent Decree.

XXI. INTEGRATION / APPENDICES

49. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

- Appendix A Operation & Maintenance Plan and Compliance Monitoring Contingency Plan;
- Appendix B Legal Description of the KHI Facility;
- Appendix C Agreement and Covenant Not to Sue;
- Appendix D Restrictive Covenant;
- Appendix E Environmental Escrow Agreement.

XXII. TERMINATION

50. This Consent Decree shall terminate when any of the following occur:
- a. Settling Defendant has fully complied with all the terms of this Consent

- Decree as evidenced by a stipulation of the Parties filed with the Court;
- b. upon further order of the Court, after proper motion and notice of hearing by any Party; or
 - c. sixty (60) days after receipt by Plaintiffs and the Court of written notice by Settling Defendant, supported by documentation, that the Escrowed Funds have been exhausted and there will be no further deposits into the Escrow Account from tax refunds, provided that neither Plaintiff files with the Court and serves upon Settling Defendant a written objection to such termination during that sixty (60) day period.

If either Plaintiff files such an objection, the Court shall treat the notice of exhaustion of the Escrowed Funds as a motion for termination of the Consent Decree and shall hold a hearing upon such motion.

SO ORDERED THIS _____ DAY OF _____, 2006.

JUDGE DOUGLAS W. HILLMAN
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. 1:88-cv-00097 (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR THE UNITED STATES OF AMERICA

Date: 10 May 2006

W. BENJAMIN FISHEROW
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Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
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Western District of Michigan

W. FRANCESCA FERGUSON
Assistant United States Attorney
United States Attorney's Office
P.O. Box 208
Grand Rapids, MI 49501-0208

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. 1:88-cv-00097 (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: 5/5/06

BHARAT MATHUR
Acting Regional Administrator (R-19J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson
Chicago, IL 60604

SUSAN W. PROUT
Associate Regional Counsel (C-14J)
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. 1:88-cv-00097 (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR THE STATE OF MICHIGAN

MICHAEL A. COX
Attorney General

Date: May 3, 2006

PAMELA L. STEVENSON
Assistant Attorney General
State of Michigan
Department of Attorney General
P.O. Box 30755
Lansing, MI 48909

Date: Apr. 12, 2006

GEORGE BRUCHMANN
Chief, Waste and Hazardous Materials Division
Michigan Department of Environmental Quality
Constitution Hall, Atrium North
P.O. Box 30241
Lansing, MI 48909-7741

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. 1:88-cv-00097 (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR HUNTINGTON NATIONAL BANK,
AS SUCCESSOR TO FMB--FIRST
MICHIGAN BANK, AS TRUSTEE OF THE
MARY A. WINDOLPH TRUST

Date: 3/27/06

A Vice President, BRAD LATOUR

Date: 4-4-06

~~JOHN DUNN~~
Warner, Norcross & Judd
900 Fifth Third Center
111 Lyon NW
Grand Rapids, MI 49503

APPENDIX A

**OPERATION AND MAINTENANCE PLAN AND
COMPLIANCE MONITORING CONTINGENCY PLAN
FOR THE KHI FACILITY**

OPERATION AND MAINTENANCE PLAN

For The Former Kent Holland, Inc., Site

Holland, Michigan

March 2006

This *Operation and Maintenance Plan* was prepared, on behalf of the Mary Windolph Trust (Trust), by ERM, Inc. (ERM) for the former Kent Holland, Inc., (KHI) site in connection with the closure and corrective action requirements for this site pursuant to RCRA and Part 111 of the Natural Resources and Environmental Protection Act, NREPA, P.A. 451 of 1994 (Act 451). The Waste and Hazardous Material Division of the Michigan Department of Environmental Quality (MDEQ) acknowledges that the site is authorized for a groundwater waiver by virtue of having a monitoring program and a contingency plan for groundwater (Part 201 of Act 451 Rules R299.5705(5) and (6), and statute section 324.20118(6)(d)). This plan defines amended groundwater monitoring requirements for the KHI site based upon correspondence from the Michigan Department of Environmental Quality dated 20 December 2002 and 10 February 2006. These actions are as follows:

- Semi-annual monitoring will continue until such time that the results remain below Part 201 clean-up criteria for three years of semi-annual monitoring (six samples) or two years of quarterly monitoring (eight samples). The Trust reserves the option to petition the MDEQ to further reduce or terminate the groundwater monitoring requirements for the site based upon monitoring trends or other relevant data or information.
- The semi-annual sampling shall include monitoring well MW-14D only. Samples will be analyzed for volatile organic compounds using U.S. EPA Method 8260.
- An annual groundwater monitoring report will be completed and submitted to the MDEQ by March 1st for the previous calendar year data; reports will include semi-annual monitoring results and a discussion of any exceedances of current Michigan Part 201 criteria contained in the Compliance Monitoring Contingency Plan. For the first semi-annual event of each year, initial reporting will be limited to submittal of the monitoring data and a tabular comparison of historical results.
- Monitoring well MW-14D will not be removed or replaced without the notification and approval of the MDEQ.
- Upon termination of groundwater monitoring requirements, MW-14D will be properly abandoned utilizing MDEQ approved protocol.

COMPLIANCE MONITORING CONTINGENCY PLAN

*For The Former Kent Holland, Inc., Site
Holland, Michigan
March 2006*

This contingency plan was prepared, on behalf of the Mary Windolph Trust (Trust) by Environmental Resources Management, Inc. (ERM) for the former Kent Holland, Inc. (KHI) site in connection with the closure and corrective action requirements for this site pursuant to RCRA and Part 111 of the Natural Resources and Environmental Protection Act, NREPA, P.A. 451 of 1994 (Act 451). This plan identifies those actions to be taken, by the Trust, in the event that the compliance monitoring system identifies a significant exceedance (as defined below) of the applicable Part 201 of Act 451 of 1994, as amended, Cleanup Criteria. Samples from monitoring well MW-14D shall be compared to Part 201 Residential Drinking Water criteria. As an option, the Trust may utilize risk analysis methods, as approved by the MDEQ, to develop site-specific cleanup criteria for evaluating compliance with the applicable monitoring requirements.

1. In the event a significant exceedance of the Monitoring Criteria (attached) is discovered in monitoring well MW-14D for Vinyl Chloride, the well will be re-sampled within fourteen (14) days to verify the analytical results. Within seven (7) days of receiving laboratory data reporting any significant exceedance found during groundwater sampling, the Waste and Hazardous Materials Division (WHMD) of the MDEQ will be notified. Significant exceedance shall be defined as exceeding the maximum observed concentration to date (i.e., 6.6ug/l).
2. If the re-sample of the suspect monitoring well reveals contaminant concentrations at or below the significant level defined above, monitoring will continue as described in the Operations and Maintenance Plan, dated March 2006.
3. If the re-sample confirms a significant exceedance of the Monitoring Criteria, the WHMD of the MDEQ will be notified within seven (7) days of receiving the laboratory results. Within 30 days from the time the re-sample analytical results are received by the Trust, a work plan describing methods to evaluate the significance and likely impact of the exceedance will be provided to the MDEQ for approval.
4. Within 90 days following the approval of any such work plan, a report regarding the impact evaluation will be submitted to the MDEQ. The

schedule for submission of the report may be adjusted to reflect the scope and nature of the work, if any, necessary for the evaluation.

5. If the evaluation report indicates a need for remediation activities, a work plan describing any necessary remediation actions to be completed in order to mitigate the impact will be provided to the WHMD of the MDEQ for approval within 60 days of the submission of the evaluation report. Current Part 201 Rules shall govern the requirements and criteria for any remedial action.
6. Within 60 days following the work plan approval, the plan will be implemented by the Trust or its designated representative.
7. Within 30 days of the completion of any necessary remediation activities contained in the work plan, a report will be submitted to the WHMD of the MDEQ, describing the activities completed, results of the remediation activities, and any other pertinent information for a determination of remaining monitoring requirements.

**PART 201 GROUNDWATER MONITORING CRITERIA
FOR KENT HOLLAND, INC.**

The following table summarizes the groundwater criteria levels, for the primary contaminants of concern, at the former Kent Holland, Inc., facility.

Parameter	Groundwater Monitoring Criteria			
	Background Levels	Part 201	Part 201	GSI
		Commercial II Drinking Water	Residential Drinking Water	
Chromium	---	100	100	150
Chromium VI	---	100	100	11
Copper	680	1,000	1,000	90
Nickel	---	100	100	3,800
Zinc	2,452	5,000	2,400	240
Free Cyanide	---	200	200	44
Bromodichloromethane	---	100	100	---
Chlorobenzene	---	100	100	---
Chloroform	---	100	100	---
1,2-Dichloroethane	---	5.0	5.0	---
Cis-1,2-Dichloroethene	---	70	70	---
1,2-Dichloropropane	---	5.0	5.0	---
Tetrachloroethylene	---	5.0	5.0	---
Toluene	---	790	790	---
Trichloroethylene	---	5.0	5.0	---
Vinyl Chloride	---	2.0	2.0	---
Xylenes (total)	---	280	280	---

NOTES:

- GSI criteria represent Preliminary Effluent Limits (PELs) developed in accordance with the Environmental Response Division Addendum to Operational Memorandum #8, Revision 4 and Operational Memorandum #14, Revision 2 dated August 18, 1997, and Part 4, Rule 57 of Part 21 of the Natural Resources and Environmental Protection Act, Act 451 of 1994. A hardness of 235 mg/l was assumed based on the 5 June 1998 Dell Engineering, Inc. letter, and approved in a MDEQ letter dated 7 August 1998.
- Part 201 Criteria was obtained from the MDEQ Cleanup Criteria Tables dated June 2005.
- Background concentrations calculated by ERM, Inc. (formerly Dell Engineering, Inc.) and presented to the MDEQ on 7 January 1999.
- All concentrations are in micrograms per liter.

APPENDIX B

LEGAL DESCRIPTION OF THE KHI FACILITY

LEGAL DESCRIPTION OF THE KHI FACILITY

Real Estate situated in the Township of Holland, County of Ottawa, State of Michigan, described as:

Parcel 1: A parcel of land in the Northwest 1/4 of the Southeast 1/4 of Section 21, Township 5 North, Range 15 West, described as bounded on the North by the South margin line of Gordon Street; on the West by the East line of US-31; and on the South by the North line of the Chesapeake and Ohio Railroad right-of-way; on the East by the East line thereof; excepting therefrom a parcel measuring 300 feet North and South by 75 feet East and West in the Northeast corner thereof (also known as part of Government Lot 2); Section 21, Town 5 North, Range 15 West, also excepting the North 50 feet thereof.

Parcel 2: The East 75 feet of the North 300 feet of Government Lot 2, being a part of the West 1/2 of the Southeast 1/4 of Section 21, Town 5 North, Range 15 West, Township of Holland, County of Ottawa, State of Michigan, excepting the North 50 feet thereof.

Parcel 3: The West 200 feet of the East 1/2 of the Southeast 1/4 of Section 21, Town 5 North, Range 15 West, lying North of the right-of-way of Chesapeake & Ohio Railway (formerly Pere Marquette Railway), Township of Holland, County of Ottawa, State of Michigan; except the North 133 feet of the East 50 feet thereof; also excepting the North 50 feet thereof.

Tax Role Permanent Parcel Number: 70-16-21-400-037

APPENDIX C

AGREEMENT AND COVENANT NOT TO SUE

IN THE MATTER OF:)

U.S. EPA Region 5

Docket Number:

THE KHI FACILITY

and

ADW, L.L.C.

AGREEMENT AND COVENANT

NOT TO SUE

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Appendix

Description

A

Legal Description of the KHI Facility

B

[Purchaser] [Lessee] Certification of Compliance
with Agreement and Covenant Not to Sue

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("U.S. EPA"), the State of Michigan ("State") and Purchaser (collectively the "Parties").

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k, and the authority of the Attorney General of the United States to compromise and settle claims of the United States, and the authority of the Michigan Department of Attorney General to compromise and settle claims of the State.

3. Purchaser is ADW, L.L.C. Purchaser intends to develop the property for retail purposes. Purchaser is a limited liability company formed in the State of Michigan and has its company headquarters at 44 East 8th Street, Suite 510, Holland, Michigan 49423.

4. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. A purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII (Certification), VIII (Covenant Not to Sue by the United States and the State), IX (Reservations of Rights by the United States and the State), and X (Covenants Not to Sue by Purchaser), and XI (Reservations of Rights by Purchaser), the potential liability of the Purchaser for the Existing Contamination at the Property which might otherwise result from Purchaser becoming the owner of the Property.

5. The Parties agree that the Purchaser's entry into this Agreement, and the actions undertaken by the Purchaser in accordance with the Agreement, do not constitute an admission of any liability by the Purchaser.

6. The resolution of this potential liability, in exchange for provision by the Purchaser to the United States and the State of a substantial benefit, is in the public interest.

II. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or RCRA, or in regulations promulgated under CERCLA or RCRA, shall have the meaning assigned to them therein or in such regulations, including any amendments thereto.

a. "Agreement" shall mean this Agreement and Covenant Not to Sue.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, and the regulations promulgated thereunder.

c. "Consent Decree" shall mean the Consent Decree signed by the Trustee, the United States, and the State in United States of America et al. v. FMB--First Michigan Bank, as Trustee of the Mary A. Windolph Trust, Case No. 1:88-cv-00097, and to be entered in the United States District Court for the Western District of Michigan, in which the Trustee remains primarily liable for completion of closure and post-closure activities under RCRA, including, without limitation, any response activities required due to the discovery of Existing Contamination at the KHI Facility. The State is responsible for overseeing all closure and post-closure activities as an authorized state under RCRA.

d. "Escrowed Funds" shall mean the funds held in escrow pursuant to paragraph 8 of the Consent Decree.

- e. "Existing Contamination" shall mean:
- i. any Waste Material present or existing on or under the KHI Facility as of the effective date of this Agreement;
 - ii. any Waste Material that migrated from the KHI Facility prior to the effective date of this Agreement; and
 - iii. any Waste Material presently at the KHI Facility that migrates onto or under or from the KHI Facility after the effective date of this Agreement.
- f. "KHI Facility" shall mean the facility, as defined at 40 C.F.R. § 260.10 and Mich. Admin. Code r 299.9103(q), owned by the Trust at 582 East Lakewood Blvd., Holland, Michigan, also known as the Kent-Holland facility, and encompassing approximately seven acres, more or less, including the areas in which Waste Material has come to be located. The legal description of the KHI Facility is attached as Appendix A to this Agreement.
- g. "MDEQ" shall mean the Michigan Department of Environmental Quality and its successor departments or agencies of the state of Michigan.
- h. "NREPA" shall mean the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Mich. Comp. Laws § 101 et seq.
- i. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or an upper or lower case letter.
- j. "Part 111" shall mean Part 111, Hazardous Waste Management, of NREPA, Mich. Comp. Laws § 324.11101 et seq., Mich. Stat. Ann. § 13A.11101 et seq., and its administrative rules.

k. "Part 201" shall mean Part 201, Environmental Remediation, of NREPA, Mich. Comp. Laws § 234.20101 et seq., Mich. Stat. Ann. § 13A20101 et seq., and its administrative rules.

l. "Parties" shall mean the United States, the State, and the Purchaser.

m. "Purchaser" is ADW, L.L.C.

n. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-6992k, and the regulations promulgated thereunder.

o. "Section" shall mean a portion of this Agreement identified by a roman numeral.

p. "State" shall mean the State of Michigan, its departments, agencies and instrumentalities.

q. "Trust" shall mean the Mary A. Windolph Trust.

r. "Trustee" shall mean Huntington National Bank, as the successor to FMB-First Michigan Bank, as trustee of the Mary A. Windolph Trust.

s. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

t. "United States" shall mean the United States of America, acting on behalf of U.S. EPA.

u. "Waste Material" shall mean (1) any "hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and/or (3) any "solid waste" under Section 1004(27) of RCRA, 42.U.S.C. § 6903(27) and (4) any "hazardous substance" under Section

20101(1)(t) of the NREPA, Mich. Comp. Laws § 324.20101(1)(t).

III. STATEMENT OF FACTS

8. The Trustee has agreed to sell and the Purchaser has agreed to purchase the KHI Facility. The net proceeds of the sale of the KHI Facility will be held in an environmental escrow account and will be used by the Trustee to fund the Trustee's obligations under the Consent Decree.

9. The KHI Facility is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and a "disposal facility" within the meaning of 40 C.F.R. § 260.10 and Mich. Admin. Code r. 299.9102(o).

10. The Mary A. Windolph Trust is the current owner of the KHI Facility.

11. Various electroplating businesses have operated at the KHI Facility over time. The most recent operator of the KHI Facility, Kent-Holland Die Casting and Plating, Inc. ("Kent-Holland"), filed a bankruptcy petition in 1984, ceased operating in 1985, and was liquidated through bankruptcy. Kent-Holland never filed its RCRA Part B permit application, as required by 42 U.S.C. § 3005(e)(2). In 1988, the United States and the State each filed complaints against the Trustee and the Trust, as owner of the KHI Facility, seeking closure and post-closure of the KHI Facility under RCRA. The Trustee has completed substantially all of the closure activities and is obligated to complete the remaining closure activities, including post-closure groundwater monitoring, under the terms of the Consent Decree.

12. The Purchaser represents, and for the purposes of this Agreement, the United States and the State rely on those representations, that the Purchaser has had no connection or involvement with the KHI Facility or any location adjacent to the KHI Facility (other than visits

and inspections after January 1, 2005).

IV. PURCHASER'S OBLIGATIONS

13. In consideration of and in exchange for the United States' and the State's Covenants Not to Sue in Section VIII herein, the Purchaser shall:

- a. Pay \$665,000 for the KHI Facility. As provided in Paragraph 8 of the Consent Decree, certain proceeds will be held in an environmental escrow account to be used by the Trustee to fund the Trustee's obligations under the Consent Decree ("Escrowed Funds").
- b. Prior to the effective date of this Agreement, prepare and submit to MDEQ for review and approval a Due Care Compliance Plan for the KHI Facility that complies with the requirements of Rule 1003(4) of Part 201 of the Mich. Admin. Code r. 299.51003(4). Purchaser shall implement the provisions of the Due Care Compliance Plan approved by the MDEQ, in consultation with U.S. EPA, upon becoming an owner or operator of the KHI Facility.

V. ACCESS / SUCCESSORS-IN-INTEREST / NOTICE RESPONSIBILITIES

14. Commencing upon the date that it acquires title to the KHI Facility, Purchaser shall provide the irrevocable right of access to U.S. EPA, the State, and their authorized officers, employees, representatives, and all other persons, at all reasonable times, upon presentation of credentials, to the KHI Facility and to any other property within Purchaser's ownership or control to which access is required for the implementation of the Consent Decree or for response actions at the KHI Facility, for the following purposes:

- a. monitor the progress of activities required under the Consent Decree;
- b. verify any data or information submitted to the United States or the State

in accordance with terms of the Consent Decree;

- c. obtain samples and, upon request, splits of any samples taken by the Trustee or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data;
- e. assess the Trustee's compliance with the Consent Decree; and
- f. oversee or perform response actions.

U.S. EPA and MDEQ agree to provide reasonable notice to the Purchaser of the timing of response actions to be undertaken at the KHI Facility. Notwithstanding any provision of this Agreement, U.S. EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and NREPA, and any other applicable statute or regulation, including any amendments thereto.

15. The Purchaser shall ensure that assignees, successors-in-interest, lessees, and sub-lessees of the KHI Facility shall provide the same access and cooperation. The Purchaser shall ensure that a copy of this Agreement and the Consent Decree are provided to any current lessee or sub-lessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments, or transfers of the KHI Facility, or an interest in the KHI Facility, are consistent with this Section and Sections XII (Parties Bound) and XIII (Transfer of Agreement by the United States and the State) of this Agreement.

16. Within thirty (30) days after the effective date of this Agreement or the date of acquisition of the KHI Facility, or any portion of it, whichever date is later, the Purchaser shall submit to MDEQ for review and approval, in consultation with U.S. EPA, a notice to be filed with the Register of Deeds in the Recorder's Office for Ottawa County, Michigan, which shall

provide notice to all successors-in-title that the State has approved the Closure Certification Report for the property, and that the Trustee has entered into a Consent Decree requiring implementation of the Operation and Maintenance Plan and the Compliance Monitoring Contingency Plan. Such notice(s) shall identify the United States District Court for the Western District of Michigan as the court in which the Consent Decree was filed, the name and civil action number of the case, and the date the Consent Decree was entered by the Court. The Purchaser shall record the notice(s) within ten (10) days of MDEQ's approval of the notices. The Purchaser shall provide U.S. EPA with a certified copy of any recorded notice within ten (10) days of recording such notice, and shall revise it if U.S. EPA or the State determine it should be revised.

17. Any change in the ownership or corporate status of the Purchaser shall not alter the Purchaser's responsibilities under this Agreement. Purchaser shall be responsible for any non-compliance with this Agreement by its contractors, subcontractors, and representatives.

18. The Purchaser shall ensure that a copy of this Agreement and the Consent Decree are provided to any subsequent purchasers, assignees, successors-in-interest, lessees, and sub-lessees. The Purchaser will also provide a copy of this Agreement and the Consent Decree to any contractor or subcontractor whose contract obligations may affect the Purchaser's ability to comply with this Agreement, including but not limited to the Due Care Compliance Plan referenced in Paragraph 13.b.

VI. DUE CARE / COOPERATION

19. The Purchaser shall exercise due care at the KHI Facility with respect to Existing Contamination and shall comply with all applicable local, State, and federal laws and

regulations, and the Due Care Compliance Plan (referenced in Paragraph 13.b). The Purchaser recognizes that the implementation of response actions at the KHI Facility may interfere with the Purchaser's use of the KHI Facility, and may require closure or delay of its activities or a part thereof. The Purchaser agrees to cooperate fully with U.S. EPA and MDEQ in the implementation of response actions at the KHI Facility and further agrees not to interfere with such response actions. U.S. EPA and MDEQ agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Purchaser's operations by such entry and response. In the event the Purchaser becomes aware of any action or occurrence that causes or threatens a release of Waste Materials at or from the KHI Facility that constitutes an emergency situation or may present an imminent and substantial endangerment to public health or welfare or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify U.S. EPA and the MDEQ of such release or threatened release.

VII. CERTIFICATION

20. By entering into this agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to U.S. EPA and MDEQ all information known to Purchaser and all information in the possession or control of its members, directors, employees, contractors, and agents that relates in any way to Existing Contamination and its qualification for this Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to Existing Contamination at or adjacent to the KHI

Facility.

21. If the United States or the State determines that the information provided in Paragraph 20 by Purchaser is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States and the State reserve all rights each may have. Following the voiding of any covenant not to sue pursuant to this Paragraph, in any action brought by the United States or the State against the Purchaser, Purchaser shall not raise any defenses based in whole or in part on the time elapsed between the entry of this Agreement and the commencement of such action by the United States or the State, including, but not limited to, defenses based upon any statute of limitations, laches, waiver, estoppel, or lack of jurisdiction.

VIII. COVENANTS NOT TO SUE BY THE UNITED STATES AND THE STATE

22. Subject to the Reservations of Rights in Sections V (Access / Successors-in-Interest / Responsibilities), VII (Certification) and IX (Reservations of Rights by the United States and the State), and Paragraph 32 of this Agreement, the United States and the State covenant not to sue or take any other civil or administrative action against Purchaser for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Sections 3008 and 7003 of RCRA, 42 U.S.C. §§ 6928 and 6973, and Parts 111 and 201 of NREPA with respect to the Existing Contamination. The covenants not to sue in this Paragraph shall take effect upon the effective date of this Agreement. These covenants not to sue extend only to Purchaser and do not extend to any other person, except as otherwise provided by compliance with Section XIII (Transfer of Agreement by United States and the State).

IX. RESERVATIONS OF RIGHTS BY THE UNITED STATES AND THE STATE

23. The covenant not to sue set forth in Section VIII (Covenants Not to Sue by the United States and the State) above does not pertain to any matters other than those expressly specified in Section VIII. Notwithstanding any other provision in this Agreement, the United States and the State reserve, and this Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including but not limited to:

- a. claims based on a failure of Purchaser to meet a requirement of this Agreement;
- b. liability arising from past, present, or future release or threat of release of Waste Material at or from the KHI Facility caused or contributed to by Purchaser or its successors, assignees, contractors, subcontractors, representatives, lessees, or sub-lessees;
- c. liability arising from exacerbation by Purchaser, its successors, assignees, contractors, subcontractors, representatives, lessees or sub-lessees, of Existing Contamination;
- d. liability arising from the release or threat of release of Waste Material not within the definition of Existing Contamination at the KHI Facility after the effective date of this Agreement;
- e. criminal liability;
- f. liability for violations of local, State, or federal laws or regulations that occur after the effective date of this Agreement;
- g. liability (including without limitation for Existing Contamination) under RCRA arising out of actions by Purchaser, its successors, assignees, contractors, subcontractors, representatives, lessees, or sub-lessees that require a RCRA permit in accordance with

42 U.S.C § 6925 or 40 C.F.R. Parts 264 and 270, or that create liability under 42 U.S.C. § 6922 or 40 C.F.R. Part 262; and

h. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than U.S. EPA.

24. With respect to any claim or cause of action asserted by the United States or the State, the Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

25. This Agreement is not and shall not be interpreted to be a permit, or a modification of any permit, under any federal, state, or local law or regulation, nor shall it in any way relieve Purchaser or any other person from any obligation to obtain a permit and comply with the requirements of any applicable permit. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and State laws and regulations.

26. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States or the State may have against any person, firm, corporation, or other entity not a Party to this Agreement. Nothing in this Agreement is intended to create any rights, claims, or defenses in persons or entities that are not a Party to this Agreement and all Parties to this Agreement expressly reserve all rights and claims each may have against, and all defenses each may have to claims of, persons and entities that are not a Party to this Agreement.

27. Nothing in this Agreement shall in any way restrict or limit the nature or scope of

response actions which may be taken by U.S. EPA and the State in exercising their authority under federal or state law. Purchaser acknowledges that it is purchasing property where a response action may be required. In exercising their lawful authorities to compel future response actions for Existing Contamination or to compel payment for response actions for Existing Contamination at the KHI Facility, U.S. EPA and the State acknowledge that the Trustee is responsible under the Consent Decree for the costs of future response actions for the Existing Contamination until the Escrowed Funds are exhausted. Nothing in this subparagraph is intended to affect or limit the obligations and rights set forth in Section VI (Due Care/ Cooperation) and Section IX (Reservations of Rights by the United States and the State) of this Agreement.

X. COVENANTS NOT TO SUE BY PURCHASER

28. In consideration of the United States' and the State's covenants not to sue in Section VIII of this Agreement, the Purchaser hereby covenants not to sue and not to assert any claims or causes of action against the United States or the State, or their authorized officers, employees, or representatives, with respect to the KHI Facility or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law; any claim against the United States under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, relating to the KHI Facility; or any claims arising out of activities at the KHI Facility, including claims based on U.S. EPA's or the State's oversight of such activities or approval of plans for such activities. Purchaser's covenants not to sue shall not apply in the

event that the United States brings a cause of action against Purchaser pursuant to Paragraph 23 or Section VII (Certification) of this Agreement, but only to the extent arising from the same cause of action asserted by the United States pursuant to Paragraphs 23 or Section VII (Certification).

XI. RESERVATIONS OF RIGHTS BY PURCHASER

29. The Purchaser reserves, and this Agreement is without prejudice to, actions against the United States or the State based on negligent actions taken directly by the United States or the State, not including oversight or approval of the Purchaser's plans or activities, that are brought pursuant to any statute other than CERCLA, RCRA, or NREPA and for which the waiver of sovereign immunity is found in a statute other than CERCLA, RCRA, or NREPA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

30. Except as provided in Paragraph 21, Purchaser reserves its right to assert any defenses available to it under applicable law, including without limitation, an argument that any release or contamination caused by it is divisible from Existing Contamination. The United States reserves all rights to contest any defense asserted by Purchaser under applicable law.

XII. PARTIES BOUND

31. This Agreement shall apply to and be binding upon the United States and the State and shall apply to and be binding on the Purchaser, its members, directors, and employees. The United States' Covenants Not to Sue in Section VIII and Contribution Protection in Section XIX shall apply to Purchaser's members, directors, or employees to the extent that the alleged liability of the member, director, or employee is based on its status and in its capacity as a

member, director, or employee of Purchaser, but not to the extent that the alleged liability arose independently of the alleged liability of the Purchaser. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

XIII. TRANSFER OF AGREEMENT BY THE UNITED STATES AND THE STATE

32. Upon completion of the following conditions, a transferee of all or a portion of the KHI Facility shall have all rights under this Agreement, including, but not limited to, any right under Section VIII (Covenants Not to Sue by the United States and the State) or Section XIX (Contribution Protection):

- a. at least thirty (30) days before the transfer, the transferee submits to U.S. EPA an affidavit, such as that attached at Appendix B, which identifies the transferee and the property to be transferred, describes the proposed transfer, and certifies that:
 - i. the transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;
 - ii. the transferee's use of the KHI Facility will not result in a release or threat of release of any Waste Material;
 - iii. the transferee's use of the KHI Facility will not cause or contribute to the migration or release of any Existing Contamination or any threat to human health or the environment caused by any such release or threat of release; and
 - iv. the person signing the affidavit is fully authorized to make the foregoing certifications and to legally bind the transferee;
- b. U.S. EPA consents in writing to the transfer of the rights, benefits, and

obligations conferred under the Agreement to the transferee. U.S. EPA shall provide Purchaser and transferee with its determination within sixty (60) days of receipt of transferee's affidavit. Any failure by U.S. EPA to render a decision within sixty (60) days shall be construed as a denial; and

c. Prior to or simultaneous with the transfer of all or a portion of the KHI Facility, the transferee consents in writing to be bound by and perform, from the date of transfer, all of the terms and obligations of the Agreement as though it were Purchaser. These terms and obligations include, but are not limited to those set forth in Paragraph 13.b; Sections V (Access / Successors-In-Interest / Responsibilities); VI (Due Care / Cooperation); VII (Certification); VIII (Covenants Not To Sue By The United States and the State); IX (Reservations of Rights by the United States and the State); X (Covenants Not To Sue by Purchaser); XI (Reservations of Rights by Purchaser); XII (Parties Bound); XIII (Transfer of this Agreement by the United States and the State); XIV (Disclaimer); XV (Document Retention); XVI (Payment of Costs); XVII (Notices and Submissions); and XIX (Contribution Protection).

If at any time U.S. EPA determines that the transferee's affidavit is not materially accurate or complete, the Covenants Not to Sue by the United States and the State in Section VIII and Contribution Protection in Section XIX shall be null and void with respect to the transferee, and the United States reserves all rights it may have against the transferee.

33. If all conditions in Paragraph 32 are satisfied, upon transfer of ownership of the entire KHI Facility, Purchasers shall be released from the obligations set forth in Paragraphs 14 and 15. Purchaser shall not be released from any other obligations set forth in this Agreement, except as U.S. EPA and Purchasers agree otherwise and modify this Agreement in writing.

34. A lessee or sub-lessee (collectively "lessee") on all or a portion of the KHI Facility shall have all rights under this Agreement, including, but not limited to, any right under Section VIII (Covenants Not to Sue by the United States and the State) or Section XIX (Contribution Protection), by providing to U.S. EPA prior to the date of tenancy, the written certification set forth in the affidavit attached at Appendix B. However, if at any time U.S. EPA determines that the lessee's affidavit is not materially accurate or complete, the Covenant Not to Sue by the United States and the State in Section VIII and Contribution Protection in Section XIX shall be null and void with respect to the lessee, and the United States reserves all rights it may have against the lessee. No rights under this Agreement shall apply to a lessee that is unable to provide such written certification.

XIV. DISCLAIMER

35. This Agreement in no way constitutes a finding by U.S. EPA or the State as to the risks to human health and the environment which may be posed by contamination at or adjacent to the KHI Facility, nor constitutes any representation by U.S. EPA or the State that the KHI Facility is fit for any particular purpose.

XV. DOCUMENT RETENTION

36. The Purchaser agrees to retain and make available to U.S. EPA and the State all business and operating records, contracts, site studies and investigations, and documents relating to operations at the KHI Facility, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Purchaser shall notify U.S. EPA and the State of the location of such documents and shall provide U.S. EPA and the State with an opportunity to copy any documents at the expense of

U.S. EPA or the State.

XVI. PAYMENT OF COSTS

37. If the Purchaser fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or to otherwise obtain compliance.

XVII. NOTICES AND SUBMISSIONS

38. Whenever under the terms of this Agreement notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to addresses specified below, unless the Party gives notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
Re: DJ # 90-7-1-433

(Courier Deliveries)
ENRD Mailroom 2121
601 D St. NW
Washington, DC 20004

Susan W. Prout (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Diane Sharrow (HRE-8J)
RCRA Enforcement
U.S. Environmental Protection Agency Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

To the State:

(for all matters other than payment of costs)

JoAnn Merrick, Chief
Compliance and Enforcement Section
Waste Management Division
P.O. Box 30241
Lansing, MI 48909-7760

(for payment of costs)

Revenue Control Unit
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, MI 48909-8157

To the Purchaser:

ADW, L.L.C., a Michigan Limited Liability Company
Matthew D. Wickstra, its managing member
44 East Eighth St., Suite 510
Holland, MI 49423

Ronald E. Baylor
Miller Canfield Paddock and Stone, P.L.C.
444 West Michigan Ave.
Kalamazoo, MI 49007

XVIII. EFFECTIVE DATE

39. The effective date of this Agreement shall be the date upon which U.S. EPA issues written notice to the Purchaser that the United States has fully executed the Agreement and the United States has considered and responded to any public comments received.

XIX. CONTRIBUTION PROTECTION

40. With regard to claims for contribution against Purchaser, the Parties hereto agree that the Purchaser is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or any other provision of law for “matters addressed” in this Agreement. The “matters addressed” in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to Existing Contamination.

41. The Purchaser agrees, that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

42. The Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify the United States in writing within sixty (60) days of service of the complaint on it.

XX. PUBLIC COMMENT

43. This Agreement shall be subject to a thirty-day public comment period, after which the United States or the State may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate. Purchaser consents to this Agreement upon approval by the United States and the State.

XXI. MODIFICATION

44. This Agreement may be modified only by the written agreement of the Parties.

XXII. INTEGRATION / APPENDICES

45. This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix A Legal Description of the KHI Facility;

Appendix B [Purchaser] [Lessee] Certification of Compliance with Agreement and Covenant Not to Sue.

THE UNDERSIGNED PARTY enters into this Agreement and Covenant Not to Sue relating to the KHI Facility in Holland, Michigan.

FOR THE UNITED STATES OF AMERICA

Date: 10 May 2006

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
U.S. Department of Justice
Washington, D.C. 20044-7611

Date: 10 May 2006

JENNIFER A. LUKAS-JACKSON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
U.S. Department of Justice
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTY enters into this Agreement and Covenant Not to Sue relating to the KHI Facility in Holland, Michigan.

AGENCY,

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION

HEADQUARTERS

Date 4/28/06

SUSAN E. BROMM

Director

Office of Site Remediation Enforcement

1200 Pennsylvania Ave., N.W.

Washington, D.C. 20460

THE UNDERSIGNED PARTY enters into this Agreement and Covenant Not to Sue relating to the KHI Facility in Holland, Michigan.

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
REGION 5

Date: 5/5/06

BHARAT MATHUR
Acting Regional Administrator (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Date: 4/17/06

SUSAN W. PROUT
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Agreement and Covenant Not to Sue relating to the KHI Facility in Holland, Michigan.

FOR THE STATE OF MICHIGAN

MICHAEL A. COX
Attorney General

Date: May 3, 2006

PAMELA J. STEVENSON
Assistant Attorney General
State of Michigan
Department of Attorney General
P.O. Box 30755
Lansing, MI 48909

Date: April 27, 2006

GEORGE W. BRUCHMANN
Chief, Waste and Hazardous Materials Division
Michigan Department of Environmental Quality
Constitution Hall, Atrium North
P.O. Box 30241
Lansing, MI 48909-7741

FOR THE PURCHASER ADW, L.L.C.

By Matthew D. Wickstra, its Managing Member

APPENDIX A

LEGAL DESCRIPTION OF THE KHI FACILITY

Real Estate situated in the Township of Holland, County of Ottawa, State of Michigan, described as:

Parcel 1: A parcel of land in the Northwest 1/4 of the Southeast 1/4 of Section 21, Township 5 North, Range 15 West, described as bounded on the North by the South margin line of Gordon Street; on the West by the East line of US-31; and on the South by the North line of the Chesapeake and Ohio Railroad right-of-way; on the East by the East line thereof; excepting therefrom a parcel measuring 300 feet North and South by 75 feet East and West in the Northeast corner thereof (also known as part of Government Lot 2); Section 21, Town 5 North, Range 15 West, also excepting the North 50 feet thereof.

Parcel 2: The East 75 feet of the North 300 feet of Government Lot 2, being a part of the West 1/2 of the Southeast 1/4 of Section 21, Town 5 North, Range 15 West, Township of Holland, County of Ottawa, State of Michigan, excepting the North 50 feet thereof.

Parcel 3: The West 200 feet of the East 1/2 of the Southeast 1/4 of Section 21, Town 5 North, Range 15 West, lying North of the right-of-way of Chesapeake & Ohio Railway (formerly Pere Marquette Railway), Township of Holland, County of Ottawa, State of Michigan; except the North 133 feet of the East 50 feet thereof; also excepting the North 50 feet thereof.

Tax Role Permanent Parcel Number: 70-16-21-400-037

APPENDIX B

**[PURCHASER] [LESSEE] CERTIFICATION OF COMPLIANCE WITH
AGREEMENT AND COVENANT NOT TO SUE**

CERTIFIED MAIL

Margaret Guerriero (SE-5J)
Director, Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Susan W. Prout (C-14J)
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Re: [Purchaser] [Lessee] Request for Transfer of Covenant Not To Sue
KHI Facility, Holland Michigan [Docket No.:]

Dear Ms. Guerriero and Ms. Prout:

In accordance with Section XIII (Transfer of the Agreement) of the Agreement and Covenant Not to Sue, Docket No. _____, ("Agreement") the undersigned party ("Purchaser" or "Lessee") hereby requests that the United States Environmental Protection Agency ("U.S. EPA") transfer the Agreement currently provided by the United States to [Purchasers]_____ to new [Purchaser][Lessee][name]_____.

The Agreement was originally entered into by and between EPA and ADW, L.L.C. concerning the real property known as the KHI Facility located at 582 East Lakewood Blvd., Holland, Michigan, ("KHI Facility") the effective date of which was _____.

[Purchaser][Lessee] acknowledges that it has reviewed the Agreement, including any modification and notices thereto. Pursuant to Section XIII (Transfer of the Agreement), [Purchaser][Lessee] hereby agrees and certifies that:

1. [Purchaser][Lessee] has not caused or contributed to the release or threat of release of any Existing Contamination, as that term is defined in the Agreement;
2. [Purchaser][Lessee] will not use the KHI Facility in any manner that could cause or contribute to the migration or release of Existing Contamination;
3. [Purchaser][Lessee] will permit access to the KHI Facility as set forth in Paragraph 15 of the Agreement;
4. [Purchaser][Lessee] will exercise due care at the KHI Facility and cooperate with U.S. EPA as set forth in Paragraphs 13.b and 19;
5. [Purchaser][Lessee] will not interfere with response actions taken on or around the KHI facility; and
6. [Purchaser][Lessee] agrees to be bound by and subject to the terms of the Agreement, and will act consistent with the terms of the Agreement.

By submission of this letter to EPA, signed by a person authorized to bind the party making this request for transfer of the Agreement, [name] _____ requests that EPA agree to the transfer of the Agreement currently held by [name] _____. These terms and obligations include, but are not limited to, those set forth in Paragraph 13.b; Section V (Access / Successors-In-Interest / Responsibilities); Section VI (Due Care / Cooperation); Section VII (Certification); Section VIII (Covenants Not To Sue By The United States and the State); Section IX (Reservations of Rights by the United States and the State); Section X (Covenant Not To Sue by Purchaser); Section XI (Reservations of Rights by Purchaser); Section XI (Parties Bound by this Agreement); Section XIII (Transfer of Agreement); Section XIV (Disclaimer); Section XV (Document Retention); Section XVI (Payment of Costs); Section XVII (Notices And Submissions); Section XIX (Contribution Protection).

If at any time EPA determines that the [Purchaser][Lessee]'s Certification is materially inaccurate or incomplete, the Covenant Not to sue and Contribution Protection shall be null and void and the United States and EPA reserve any and all rights they may have.

U.S. EPA has agreed to review this request for transfer of the Agreement referenced above and will send notification of its unreviewable decision to the requester.

Notices and submissions required under the Agreement shall be sent to the following contact person(s) _____ [Purchaser's][Lessee's][contact person].

So Acknowledged and Agreed:

Name
Title
Address
Phone Number

Date

APPROVED:

MARGARET GUERRIERO
Director, Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5

DISAPPROVED:

MARGARET GUERRIERO
Director, Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5

DATE:

APPROVED:

RICHARD KARL
Director, Superfund Division
U.S. Environmental Protection Agency, Region 5

DISAPPROVED:

RICHARD KARL
Director, Superfund Division
U.S. Environmental Protection Agency, Region 5

DATE:

APPENDIX D
RESTRICTIVE COVENANT

DECLARATION OF RESTRICTIVE COVENANT

MDEQ Reference No. RC-WHMD-111-06-001

This Declaration of Restrictive Covenant ("Restrictive Covenant") has been recorded with the Ottawa County Register of Deeds for the purpose of protecting public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located at 582 East Lakewood Boulevard, Township of Holland, Ottawa County, Michigan, and legally described in Exhibit 1 attached hereto ("Property"). The Property is associated with the KHI, Inc. facility, formerly known as Kent-Holland Die Casting & Plating, Inc., Site ID No. 700011; MID No. 006020895. Closure and corrective action have been and are being performed pursuant to Section 1115a of Part 111, Hazardous Waste Management, of the Michigan Natural Resources and Environmental Protection Act, 1994 P.A. 451 as amended, Michigan Compiled Laws ("MCL") 324.101 et seq. ("NREPA"); Part 201, Environmental Remediation of the NREPA; the rules promulgated under these parts; and the Federal Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), (hereinafter "Corrective Action"). The MDEQ approved the Closure Certification Report on January 16, 2001, and concluded the site meets the criteria for "Limited Commercial II" land use. Huntington National Bank, as Trustee of the Mary A. Windolph Trust ("Trust"), then the Owner of the Property, was named as a defendant in an action brought by the State of Michigan Department of Attorney General ("MDAG"), and the United States Environmental Protection Agency ("USEPA"), (United States District Court for the Western District of Michigan, Case No. G88-97CA) and is a party to the Consent Decree in that action, entered by the court on _____, 2006. (the "Consent Decree").

Groundwater monitoring continues pursuant to an approved Operation and Maintenance Plan (May 2002) for the Property ("O & M Plan") and a Compliance Monitoring Contingency Plan (May 2002) for the Property ("Contingency Plan"), as provided in and attached to the Consent Decree.

ADW, LLC, a Michigan limited liability company, has purchased the Property from the Trust and entered into an Agreement and Covenant Not to Sue ("CNTS") with the State of Michigan and USEPA. ADW, LLC has also filed with the State of Michigan for approval a Due Care Compliance Plan ("DCCP") that complies with the requirements of Rule 1003(4) of the Part 201 Administrative Rules ("Part 201 Rules"), (R. 229.51003(4)). The State of Michigan has joined in the Consent Decree with USEPA and the Trust and has entered into the CNTS with ADW, LLC, pursuant to its authority under Part 111 and Part 201.

Both the Consent Decree and the CNTS require the recording of this Restrictive Covenant with the Ottawa County Register of Deeds to: 1) restrict unacceptable exposures to hazardous substances located on the Property; and 2) assure that the use of Property is consistent with the exposure assumptions utilized in the development of cleanup criteria pursuant to Section 20120a(1)(b) of the NREPA and the exposure control measures relied upon in the Closure Certification; and 3) to prevent damage or disturbance of any element of the response activity constructed on the Property. The restrictions contained in this Restrictive Covenant are based upon information available to the MDEQ at the time it was approved by the MDEQ. Failure of the response activities to achieve and maintain the criteria, exposure controls, and requirements specified in the Restrictive Covenant; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 20120a(1)(b) of the NREPA; the discovery of environmental conditions at the Property that are different from the conditions understood by MDEQ at the time this Restrictive Covenant was approved by MDEQ; or use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment. Exhibit 2 provides a survey of the Property that is subject to the land use or resource use restrictions specified herein.

Summary of Response Activities

Hazardous substances including chromium, lead, nickel, cadmium, cyanide, and chlorinated solvents were released and/or disposed of in certain areas of the Property during historic industrial activities. For several years before this Restrictive Covenant was recorded, response activities were undertaken. Buildings were demolished, drums and other containers of hazardous materials and hazardous wastes were removed for disposal, and contaminated soils

were removed from the site. Groundwater impacts have been resolving through natural attenuation in the years since removal actions were completed. Groundwater monitoring continues pursuant to the O & M Plan, as provided in the Consent Decree. Contaminant concentrations in the groundwater have steadily diminished over time, so that now only one monitoring well continues to show low levels of vinyl chloride. All areas of the Property not included in the flood plain will be, or have been, covered with an average of at least 24 inches of clean fill to replace the removed soils, level the site, and minimize potential exposures from residual impacts in the underlying soils, if any.

Definitions

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then current title holder of the Property or any portion thereof.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA, or the Part 201 Rules, 1990 AACRS R 299.5101 et seq., shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the date of filing of this Restrictive Covenant.

NOW THEREFORE,

Declaration of Land Use or Resource Use Restrictions

Pursuant to the Consent Decree, and pursuant to the CNTS and DCCP, ADW, LLC as Owner of the Property, does hereby declare and covenant that the Property shall be subject to the following restrictions and conditions:

1. The Owner shall prohibit all uses of the Property that are not compatible with the "Limited Commercial II" category (or other less restrictive categories) under Section 20120a(1) of the NREPA, as amended, as described in the MDEQ/RRD Operational Memorandum No. 1

dated December 10, 2004, or as generally described in the *Description of Allowable Uses*, attached hereto as Exhibit 3.

2. Unacceptable Exposures Prohibited: The Owner shall prohibit activities that may permit unacceptable exposures to remaining hazardous substances in the soil or groundwater, if any, as follows:

- A. Soil Removal: Soil shall not be removed from the Property unless it is characterized to determine if it can be relocated without posing a threat to the public health, safety, welfare, or environment in the new location. MCL 324.20120c.
- B. Wells: Any construction of wells or other devices to extract groundwater for consumption, irrigation, or any other use is prohibited, except for wells and devices that are part of an MDEQ-approved response activity. Short-term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations including, but not limited to, Part 201 of the NREPA.
- C. Continued Monitoring: The Owner shall not interfere with the continuing groundwater monitoring by the Trust. The Owner shall prohibit activities on the Property that may interfere with any element of the continuing groundwater monitoring activities conducted pursuant to the O & M Plan (including the performance of operation and maintenance activities or monitoring), or that may damage any monitoring well required under the O & M Plan as from time to time amended. Notwithstanding the terms of this paragraph: (i) monitoring wells no longer needed for continued groundwater monitoring may be removed by Owner as approved by MDEQ from time to time, including, without limitation, its letter dated December 20, 2002, from David Slayton (WHMD) to Ron Vriesman, PE (ERM); and (ii) monitoring wells still needed for continued groundwater monitoring may be modified by Owner (e.g., cut down or extended to grade level if the grade is changed), or removed and relocated to another location on the Property with prior written approval of the MDEQ.

3. Clean Fill and Surface Cover: The Owner shall cover all areas of the Property outside of the established flood plain with clean fill to an average depth of at least 24 inches. All parking, traffic, and storage areas shall be covered with asphalt, concrete, paving blocks, or other constructed surface. All landscaped areas shall be planted in clean soil brought in to cover the clean fill. Landscaped areas shall be maintained so that current surficial soils shall be covered with clean soil and/or stable mulch or other cover to minimize blowing dust, and plantings shall be regularly fertilized and watered as necessary to promote reasonable growth, all as consistent with Holland Charter Township zoning regulations. The Owner may fill in other areas of the Property, including the excavated former detention pond, and may cut and reshape the banks and/or change the grade of the Property as approved by MDEQ and any other agency with authority after review and approval. "The owner shall obtain all necessary permits and approvals from state and local government, and shall comply with the terms thereof.")

4. Access. The Owner shall grant to the MDEQ, USEPA, and the Trust, and their respective designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the Consent Decree, the DCCP, and the CNTS, including the right to take samples, inspect the operation of the response activities and, inspect any records relating thereto, and to perform any actions necessary to maintain compliance with, NREPA and the Consent Decree.

5. Notice. The Owner shall provide notice to the MDEQ of the Owner's intent to transfer any interest in the Property at least fourteen (14) business days prior to consummating the conveyance. The notice required to be made to the MDEQ under this Paragraph shall be made to: Director, MDEQ, P.O. Box 30473, Lansing, Michigan 48909 7973; and shall include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant, MDEQ Reference Number RC-WHMD-111-06-001. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest.

6. Term and Enforcement of Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owner; future owners; and all current and future successors, lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant may only be modified or rescinded with the written approval of the MDEQ.

The State of Michigan, through the MDEQ, may enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

7. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof, and all such other provisions shall continue unimpaired and in full force and effect.

8. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner and represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant.

IN WITNESS WHEREOF, ADW, LLC has caused this Restrictive Covenant, RC-WHMD-111-06-001, to be executed on this 28 day of March, 2006

ADW, LLC

By: _____
Signature

Name: MATTHEW D. WICKSTRA
Print or Type Name

Its: Member

STATE OF MICHIGAN)
)ss.
COUNTY OF OTTAWA)

The foregoing instrument was acknowledged before me this 28th day of March, 2006, by Matthew D. Wickstra, member of ADW, LLC, a Michigan limited liability company, on behalf of the company.

_____, Notary Public
Ottawa County, Michigan
Acting in Ottawa County, Michigan
My Commission Expires: 3/26/2011

JANICE K. BRANDENHORST
NOTARY PUBLIC, STATE OF MI
COUNTY OF OTTAWA
MY COMMISSION EXPIRES Mar 23, 2011
ACTING IN COUNTY OF Ottawa

Drafted by:
Ronald E. Baylor, Esq.
Miller, Canfield, Paddock and Stone, PLC
444 West Michigan Avenue
Kalamazoo, Michigan 49007
Phone: 269-381-7030

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

Real estate situated in the Township of Holland, County of Ottawa, State of Michigan, described as:

Parcel 1: A parcel of land in the Northwest 1/4 of the Southeast 1/4 of Section 21, Township 5 North, Range 15 West, described as bounded on the North by the South margin line of Gordon Street; on the West by the East line of US-31; and on the South by the North line of the Chesapeake and Ohio Railroad right-of-way; on the East by the East line thereof; excepting therefrom a parcel measuring 300 feet North and South by 75 feet East and West in the Northeast corner thereof (also known as part of Government Lot 2); Section 21, Town 5 North, Range 15 West, also excepting the North 50 feet thereof.

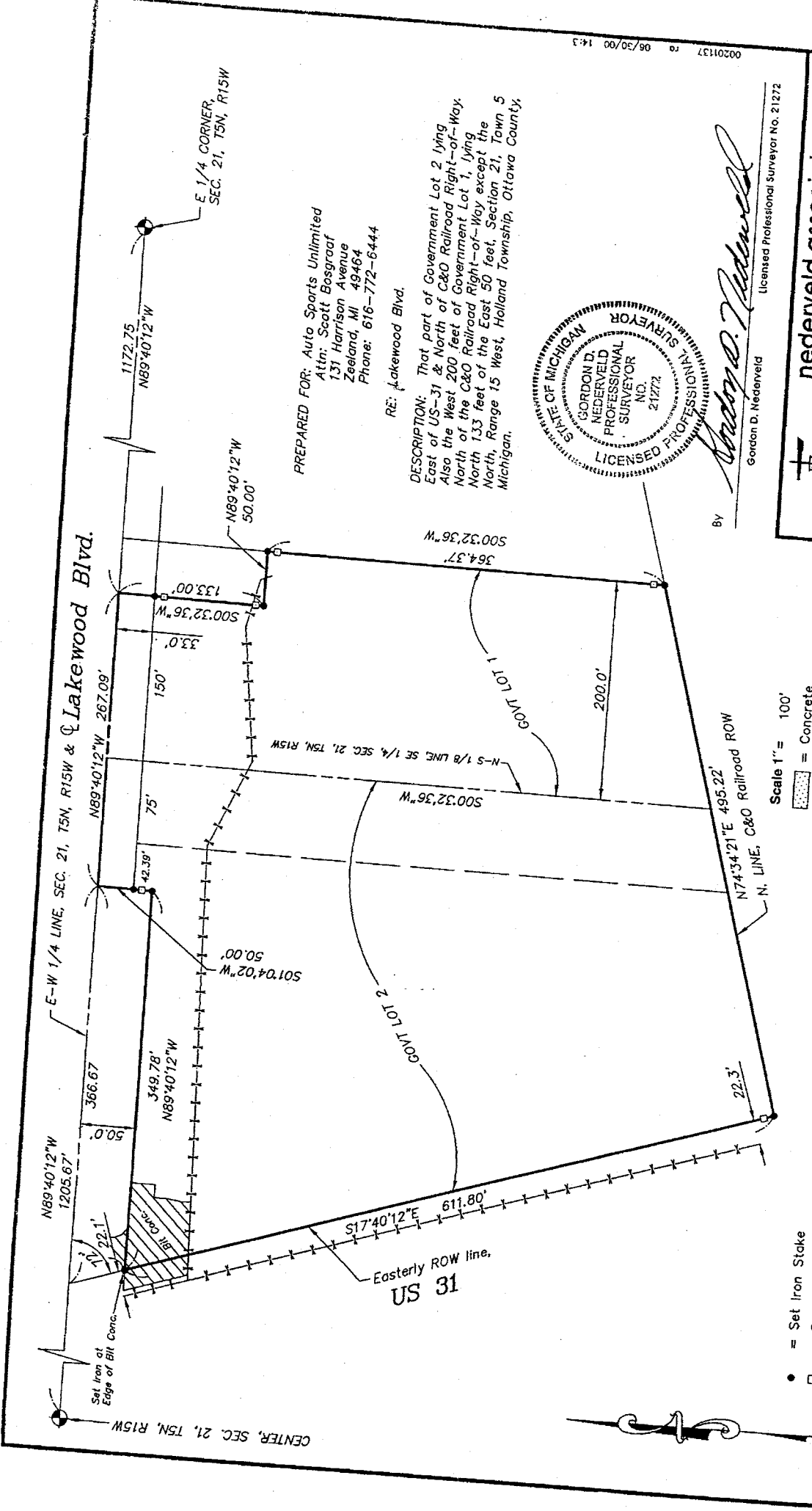
Parcel 2: The East 75 feet of the North 300 feet of Government Lot 2, being a part of the West 1/2 of the Southeast 1/4 of Section 21, Town 5 North, Range 15 West, Township of Holland, County of Ottawa, State of Michigan, excepting the North 50 feet thereof.

Parcel 3; The West 200 feet of the East 1/2 of the Southeast 1/4 of Section 21, Town 5 North, Range 15 West, lying North of the right-of-way of Chesapeake & Ohio Railway (formerly Pere Marquette Railway), Township of Holland, County of Ottawa, State of Michigan; except the North 133 feet of the East 50 feet thereof; also excepting the North 50 feet thereof.

Tax Roll Permanent Parcel Number: 70-16-21-400-037

EXHIBIT 2

SURVEY OF THE PROPERTY



Set Iron at
Edge of Blt Conc.

1205.67' N89°40'12"W

366.67' E-W 1/4 LINE, SEC. 21, T5N, R15W & Q Lakewood Blvd.

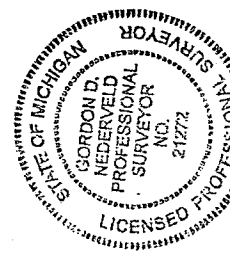
1172.75' N89°40'12"W

E 1/4 CORNER,
SEC. 21, T5N, R15W

PREPARED FOR: Auto Sports Unlimited
Attn: Scott Bosgraaf
131 Harrison Avenue
Zeeland, MI 49464
Phone: 616-772-6444

RE: Lakewood Blvd.

DESCRIPTION: That part of Government Lot 2 lying East of US-31 & North of C&O Railroad Right-of-Way. Also the West 200 Feet of Government Lot 1, lying North of the C&O Railroad Right-of-Way except the North 133 Feet of the East 50 Feet, Section 21, Town 5 North, Range 15 West, Holland Township, Ottawa County, Michigan.



BY *Gordon D. Nederveld*
Gordon D. Nederveld
Licensed Professional Surveyor No. 21272

Scale 1" = 100'

• = Set Iron Stake
□ = Set Wood Stake

D = Description dimension
M = Measured dimension
P = Platted dimension
O = Set Iron stake
X = Found iron stake

nederveld associates, inc.
engineering • surveying

Grand Rapids Office Ph. (616) 669-5190 Fax 669-6699
P.O. Box 10, 5570 32nd Avenue, Hudsonville, Michigan 49426
Lakeshore Office Ph. (616) 393-0449 Fax 392-3540
347 Hoover Boulevard • Sulle C. Holland, Michigan 49423

File No. 00201137 Date: 6-30-00 by RJA

This survey was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

EXHIBIT 3

DESCRIPTION OF ALLOWABLE USES

All uses shall be consistent with the Holland Charter Township Code, as amended, for properties included in the C-II Commercial District and/or C-III Highway Commercial District, provided such uses are consistent with the Restrictive Covenant. Allowable uses include the following to the extent permitted by local zoning ordinance and where necessary, authorized by the planning commission as a special use:

1. Any retail business whose principal activity is the sale of merchandise within an enclosed building.
2. Any retail warehouse business selling the majority of their merchandise indoors but including some limited sales and/or storage of materials in a surfaced outdoor yard, but not including on-site plant horticulture, nurseries, tree farms, or sod farms that would fall into an agricultural land use.
3. Business service establishments, including photocopying and printing, publishing, blueprinting, data processing services, employment services, word processing and court reporting services.
4. Offices, including medical, dental, post office, or other governmental offices.
5. Banks, credit unions and savings and loans with or without drive-through facilities.
6. Personal service establishments, such as tailors, barbers, beauty salons, shoe repair and self-service laundries.
7. Studios and training facilities, including art, dance, music, business, professional and trade or vocational, and day care centers, but not including elementary schools.
8. Restaurants and clubs which offer food or drink for consumption on the premises, including drive-in restaurants and restaurants with drive-through facilities, including limited outdoor seating and service area for seasonal use.
9. Any retail business whose principal activity is the sale of food or merchandise within an enclosed building, including limited outdoor seating and service area for seasonal use.
10. Health and physical fitness salons.
11. Repair and service establishments including lawnmower, snowmobile, boat, and personal watercraft repair, and appliance repair shops.
12. Assembly buildings including dance pavilions, auditoriums, churches and private clubs.
13. Radio and television broadcasting studios.
14. Gasoline service stations.
15. Car washes.
16. Funeral homes, including crematory and other ancillary funeral operations.
17. Commercial recreation facilities. Examples include indoor theaters, bowling alleys, indoor skating rinks, billiard parlors, and swimming pools.
18. Hotels and motels.
19. Veterinary hospitals and clinics.
20. Kennels.
21. Building supply and equipment establishments.
22. Commercial enterprises producing merchandise on the premises, provided that not more than fifteen (15) full-time equivalent employees are employed on the premises and such

production shall not be detrimental either by odor, noise, smoke or vibration to the nearest occupied adjacent premises, and also provided that the entire product output is sold at retail on the premises.

23. Laundry and dry cleaning establishments.
24. Vehicle repair service, not including junking or wrecking, provided all activities are conducted within a completely enclosed building unless otherwise approved by the appropriate local governmental body.
25. Sale or leasing of new and used motor vehicles, snowmobiles, boats, trailers, recreation vehicles and mobile homes, including repair when in conjunction with sale or leasing, and seasonal storage.
26. Public utility buildings, structures, service or storage yards.
27. Plant nurseries or greenhouses, provided that all incidental equipment and supplies including fertilizer, tools and containers are kept within a building and provided that plants are grown in containers or in clean potting soil brought to the site for such purposes.

This Description of Allowable Uses may be modified from time to time by application to the MDEQ District Office, Grand Rapids, Michigan, upon demonstration that another proposed use would be consistent with the purposes of the Restrictive Covenant.

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APPENDIX E
ENVIRONMENTAL ESCROW AGREEMENT

ENVIRONMENTAL ESCROW AGREEMENT

This Environmental Escrow Agreement ("EEA") is entered into by and among Huntington National Bank as escrow agent ("Escrow Agent"), and as Trustee ("Trustee") of the Mary A. Windolph Trust ("Trust"), the United States on behalf of the Environmental Protection Agency ("U.S. EPA") (collectively, the "United States"), and the State of Michigan on behalf of the Department of Environmental Quality ("MDEQ") (collectively, the "State") (collectively, the "Parties").

RECITALS

A. The Trustee, solely in its capacity as Trustee for the Trust, is a party to a Consent Decree with the United States and the State entered in the United States District Court for the Western District of Michigan, Southern Division, in Case No. G88-97-CA ("Consent Decree"). This EEA is effective on the date of entry of the Consent Decree.

B. The Consent Decree requires the Trustee to implement the Operation and Maintenance Plan and Compliance and Contingency Monitoring Plan attached at Appendix A to the Consent Decree ("O&M Plan") with regard to a facility identified as the KHI Facility, formerly known as Kent-Holland Die Casting & Plating, Inc. located on the southeast corner of the interchange of US-31 and Lakewood Boulevard, Holland Township, Ottawa County, Michigan (the "KHI Facility"). The O&M Plan includes, but is not necessarily limited to, groundwater monitoring.

C. Under the terms of the Consent Decree, the Trustee is required to provide financial assurance, in a mechanism acceptable to the U.S. EPA and MDEQ, to meet the obligations imposed by the Consent Decree. The Parties have entered into this EEA to satisfy that requirement.

D. In accordance with the requirements of this EEA and Paragraph 8 of the Consent Decree, the Trustee shall deposit certain funds from the sale of the KHI Facility or receipt of tax refunds ("Deposit") into an Environmental Escrow Account ("Escrow Account"). The Deposit, plus any earnings generated by the investment of this amount, is collectively referred to in this EEA as the "Escrow Amount."

E. Pending use of the Escrow Amount in accordance with the terms of this EEA, the Parties agree to the investment of the Escrow Amount as set forth in Subsection 3.2 of this EEA.

F. The Escrow Agent shall invest and disburse the Escrow Amount in accordance with the terms of this EEA.

G. The Trustee is authorized to direct the use of the Escrow Amount to pay to meet the obligations of the Consent Decree.

H. Unless otherwise defined in this EEA, terms used in this EEA shall have the same meaning as in the Consent Decree.

NOW, THEREFORE, in consideration of the terms and conditions of this EEA, the Parties agree as follows:

I. DEPOSIT INTO ESCROW

1.1 Deposit

As required by Paragraph 8 of the Consent Decree, within seven (7) days of the closing on the sale of the KHI Facility or receipt of tax refunds, the Trustee shall deposit cash into the Escrow Account by transferring such funds to the Escrow Agent as follows:

Escrow Agent: Huntington National Bank
Address: 101 E. Main Street, Zeeland, MI 49464
Account No.: 1087129315

1.2 Earnings on Deposits

Earnings on the Escrow Amount will be attributable to the Trustee (and to the extent required by law, reported on its tax returns) but shall be invested as part of the Escrow Amount; provided, however, that the Escrow Agent shall be entitled to pay any escrow agent fees in accordance with Section 4.12 and to disburse funds out of the Escrow Account to the Trustee to pay its federal, state, and local taxes on such earnings.

II. TERMS FOR THE RELEASE OF FUNDS FROM THE ESCROW

2.1 Disbursement Procedure for Escrow Amount

The Parties agree that the Escrow Amount shall be held and disbursed pursuant to forms, schedules, and procedures reasonably prescribed by the Escrow Agent consistent with the terms of this EEA. All requests for disbursements, except for the Escrow Agent's Fee, which will be paid to the Escrow Agent pursuant to Subsection 4.12, shall be presented in writing to the Escrow Agent.

2.2 Use of Escrow Amount to Fulfill Trustee's Obligations Under the Consent Decree

From time to time the Trustee shall provide to the Escrow Agent a request for disbursement of funds from the Escrow Account, along with invoices and supporting documentation and a certification that such disbursement is for the purpose of paying for implementing the Consent Decree, including administrative and legal expenses incurred by the Trustee. Such written direction from the Trustee shall include the following statement:

"I certify that the invoices attached hereto are true and correct copies of invoices prepared or received by me in connection with implementing the Consent Decree at the KHI Facility in Holland Township, Ottawa County, Michigan, as defined in the Consent Decree with regard to that facility."

Provided, however, no invoice shall be required for the request for disbursement of Escrowed Funds from the Escrow Account to pay the civil penalty provided for in Paragraph 12 of the Consent Decree. The aggregate amount of any disbursements made by the Escrow Agent pursuant to the Trustee's written direction shall not exceed the Escrow Amount.

2.3 Notice of Request for Disbursement

Before disbursing any of the Escrow Amount in response to a request for disbursement submitted pursuant to Section 2.2 of this EEA, the Escrow Agent shall send a notice of such disbursement, together with copies of any supporting documentation, to U.S. EPA and the MDEQ Project Manager, pursuant to Section VI (Notices) in this EEA.

2.4 Payment in the Absence of Objection

If no Party objects within 15 days of its receipt of a request for disbursement, the Escrow Agent shall remit payment within seven days thereafter.

2.5 Response if Objection

If a Party delivers an objection to a disbursement, regardless of whether or not litigation has been instituted, the Escrow Agent shall refuse to comply with the request for disbursement and shall continue to hold the Escrow Amount until the Escrow Agent has received: (i) a written notice from the objecting Party that it withdraws its objection; (ii) a written agreement executed by the Trustee, State and U.S. EPA that directs the Escrow Agent to make a disbursement from the Escrow Amount; or (iii) a final non-appealable order by a court of competent jurisdiction that has been entered pursuant to any action, lawsuit, or proceeding regarding a disbursement from this Escrow Account or regarding this EEA. For any court order referenced in (iii) above, legal counsel for the presenting party shall provide to the Escrow Agent a legal opinion that is satisfactory to the Escrow Agent and which states that said court order is final and non-appealable. The Escrow Agent shall act in accordance with such court order and the associated legal opinions without further question.

2.6 Termination of Environmental Escrow Account and Disposition of Any Remaining Escrow Amount

Upon receipt of written notification of the termination of the Consent Decree pursuant to Paragraph 46 of the Consent Decree, the Escrow Agent shall disburse any remainder of the Escrow Amount to the Trustee and terminate this Escrow Account by written notice to the Parties.

III. MANAGEMENT AND INVESTMENT OF ESCROW DEPOSIT

3.1 Preservation of Income and Principal

Subject to Sections 3.2 and 4.5 of this EEA, and at the direction of the Trustee, the Escrow Agent shall at all times hold, manage and invest the assets of the Escrow Amount in a manner designed to preserve the principal of the Escrow Amount.

3.2 Investment of Escrow Amount

The Escrow Agent shall invest and reinvest all or any part of the Escrow Amount, including any earnings on the Escrow Amount, exclusively in the following investments: United States direct obligations; obligations guaranteed by the United States or agencies of the United States; common trust funds or mutual funds that are invested primarily in United States direct or guaranteed obligations; bank certificates of deposit to the extent these certificates are insured by the federal government; and common trust funds or money market funds that are invested in short-term insured or at least "A" rated municipal bonds. In all cases, however, the Escrow Agent must ensure that the total investments are sufficiently liquid to enable the Escrow Agent to use the Escrow Amount to fulfill the purpose of this EEA.

IV. POWERS, DUTIES, AND OBLIGATIONS OF THE ESCROW AGENT

4.1 Duties of Escrow Agent

This EEA expressly sets forth all of the duties of the Escrow Agent with respect to any matters regarding this EEA. This EEA shall not be construed to imply that the Escrow Agent has any other duties or obligations. Any other agreement between the Trustee and the United States and/or the State shall not be binding on the Escrow Agent, with the exception of the Consent Decree to the extent provided in this EEA.

4.2 Authority of Escrow Agent

The Escrow Agent shall have the authority to make, execute, acknowledge and deliver any documents for the transfer or conveyance of the Escrow Amount or to use any instruments that the Escrow Agent determines are necessary or appropriate to carry out its obligations under this EEA.

4.3 Designation of Investments

The Escrow Agent may: (a) register or hold any security in bearer form or by book entry; (b) deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository or may be merged and held in the depository with other securities which were deposited by other persons; or (c) deposit or arrange for the deposit of any securities issued by the United States Government, or any of its agencies or instrumentalities, with a Federal Reserve Bank. However, the books and records of the Escrow Agent must at all times show that all such securities are part of this Escrow Account.

4.4 Accounting for the Environmental Escrow

The Escrow Agent shall keep all records regarding this Escrow Account on a calendar-year basis. The Escrow Agent also shall file a quarterly accounting report to the Parties designated in Section VI (Notice), within thirty (30) days following the close of the reporting period or a portion thereof. This accounting report shall show in reasonable detail the following:

1. The amount of the Deposit into the Escrow Account;
2. The accrued earnings on the Deposit into the Escrow Account;
3. The amount of each and every disbursement that has been paid out of the Escrow Account;
4. The remaining balance of funds in the Escrow Account.

4.5 Standard of Care

In investing, reinvesting, exchanging, selling, and managing the Escrow Amount, the Escrow Agent shall discharge its duties with respect to the Escrow Account solely in the interest of the Parties, and with the care, skill, prudence, and diligence, under the circumstances then prevailing, which persons of prudence, who are acting in a similar capacity and are familiar with such matters, would use in the conduct of an enterprise of similar character and similar aims.

4.6 Liability

The Escrow Agent shall not be liable for any acts, omissions, or defaults of any agent or depository that was appointed or selected with reasonable care. The Escrow Agent shall be liable only for its own acts or omissions that occur due to its willful misconduct, bad faith, or negligence, applying the standard of care set forth in Section 4.5.

4.7 Discretion in Exercise of Powers

The Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument, or other documents it receives under this EEA without being required to determine the authenticity or the correctness of any facts stated in those documents or the propriety or validity of any services rendered pursuant to those documents. The Escrow Agent may rely upon any instrument or signature that it reasonably believes to be genuine.

4.8 Advice of Counsel

The Escrow Agent may from time to time consult with its counsel with respect to any question that arises regarding the construction of this EEA or any actions the Escrow Agent takes or considers taking under this EEA. The Escrow Agent shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel. The monthly fee, which is to be paid to the Escrow Agent pursuant to Subsection 4.12, shall be considered to cover any expenses incurred by the Escrow Agent for the services and advice of its counsel, except as otherwise provided for in Section 4.12 of this Agreement.

4.9 Independent Escrow

The Escrow Agent acknowledges that it does not have any interest in this Escrow Account, but is serving only as the escrow holder and has control over the Escrow Amount only

for the purposes specified in this EEA. This Subsection and Subsection 4.6 shall survive after termination of this EEA and regardless of whether the Escrow Agent resigns.

4.10 Resignation or Removal of Escrow Agent

The Escrow Agent may be removed after delivery to the Escrow Agent of a joint written notice of removal signed by the United States, the State, and the Trustee. The Escrow Agent may resign upon providing sixty (60) days prior written notice to the United States, the State, and the Trustee. Such removal or resignation shall take effect sixty (60) days after delivery of the notice of removal or resignation (unless the Escrow Agent has agreed to an extension in writing), or on the date a successor escrow agent is appointed by the United States, the State, and the Trustee and such successor escrow agent has assumed the responsibilities of the Escrow Agent hereunder, whichever is earlier.

4.11 Disputes Regarding Action of Escrow Agent

If the Escrow Agent, in good faith, is in doubt as to the action or actions it should take under this EEA, the Escrow Agent shall be entitled to retain the Escrow Amount until the Escrow Agent has received: (i) a final non-appealable order by a court of competent jurisdiction directing the delivery of the Escrow Amount, or (ii) a written agreement executed by the United States, the State, and the Trustee that directs the delivery of the Escrow Amount. For any court order referred to in (i) above, legal counsel for the presenting Party shall provide to the Escrow Agent a legal opinion satisfactory to the Escrow Agent which states that said court order is final and non-appealable. The Escrow Agent shall act in accordance with such court order and the associated legal opinions without further question.

4.12 Payment of Escrow Agent Fees

Fees for services rendered by the Escrow Agent under this EEA shall be paid to the Escrow Agent from the Escrow Amount in accordance with the fee schedule, attached at Appendix A. The Escrow Agent shall be reimbursed from the Escrow Amount for all reasonable expenses and disbursements incurred or made by the Escrow Agent in performance of its duties hereunder, excluding attorney's fees except any such fees incurred in response to litigation between the Parties to which the Escrow Agent is a party. The Parties agree that the Escrow Agent's fees may be adjusted from time to time upon ninety (90) days prior written notice from the Escrow Agent to the United States, the State, and the Trustee.

V. SUCCESSORS/GOVERNING JURISDICTION/MODIFICATION, COUNTERPARTS

5.1 Successors and Assigns

This Escrow Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective successors and assigns, and shall not be enforceable by or inure to the benefit of any non-party. No Party may assign any of its rights or obligations under this EEA without the written consent of the other Parties.

5.2 Governing Jurisdiction

This EEA shall be construed in accordance with and governed by the laws of the State of Michigan.

5.3 Modification

This EEA may only be modified by written agreement signed by the Parties or by a final court order. No part of this EEA may be waived unless such waiver is in writing and is signed by the Parties affected by the waiver.

5.4. Counterparts

This EEA may be executed in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

VI. NOTICES

All notices, deliveries or other communications that are required by this EEA shall be made in writing to the following persons at the addresses listed below and shall be deemed delivered when sent by facsimile transmission or by certified or registered mail or a private courier service providing similar confirmation of delivery.

To Huntington National Bank, as Trustee

Christine Barton
Huntington National Bank
Real Estate Department (EA4E83)
7 Easton Oval
Columbus, OH 43219
Fax: (614) 331-5862

cc:

John Dunn
Warner Norcross & Judd
900 Fifth Third Building
111 Lyon Street, NW
Grand Rapids, MI 49503
Fax: (616) 222-2142

cc:

Randall S. Schipper
Cunningham Dalman, P.C.
321 Settlers Road
P.O. Box 1767
Holland, MI 49422-1767
Fax: (616) 392-4769

To the State of Michigan

Pamela J. Stevenson
Waste Management Division
Department of the Attorney General
P.O. Box 30212L
Lansing, MI 48909
Fax: (517) 373-1610

To the United States

Susan W. Prout (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
Fax: (312) 886-0747

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
Fax: (202) 514-0097

To the Escrow Agent

Brad LaTour
Huntington National Bank
173 Ottawa NW
Grand Rapids, MI 49503
Fax: (616) 235-6413

Or to any other address that any of the above persons subsequently provides to the others in writing in the manner set forth above. Such communications shall be deemed to have been delivered on the day of delivery if delivered personally or by facsimile, two days after mailing if sent by mail, and one business day after delivery if sent by overnight courier; except that any notice of change of address shall only be effective upon receipt of such address change by the persons listed above.

IN WITNESS WHEREOF, each of the Parties has executed this EEA to be effective on the date of entry of the Consent Decree.

THE UNDERSIGNED PARTY enters into this Environmental Escrow Agreement pursuant to the Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. G88-97 CA (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR THE UNITED STATES OF AMERICA

Date: 10 May 2006

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

JENNIFER A. LUKAS-JACKSON //
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

THE UNDERSIGNED PARTY enters into this Environmental Escrow Agreement pursuant to the Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. G88-97 CA (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: 5/5/06

BHARAT MATHUR
Acting Regional Administrator (R-19J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson
Chicago, IL 60604

SUSAN W. PROUT
Associate Regional Counsel (C-14J)
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Environmental Escrow Agreement pursuant to the Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. G88-97 CA (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR THE MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

Date:

Apr. 127, 2006

GEORGE BRUCHMANN
Chief, Waste and Hazardous Materials Division
Michigan Department of Environmental Quality
Constitution Hall, Atrium North
P.O. Box 30241
Lansing, MI 48909-7741

THE UNDERSIGNED PARTY enters into this Environmental Escrow Agreement pursuant to the Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. G88-97 CA (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR HUNTINGTON NATIONAL BANK,
AS SUCCESSOR TO FMB--FIRST
MICHIGAN BANK, AS TRUSTEE OF THE
MARY A. WINDOLPH TRUST

Huntington National Bank, Trustee

Date: March 24, 2006

CHRISTINE BARTON
Vice President & Trust Officer
Huntington National Bank

THE UNDERSIGNED PARTY enters into this Environmental Escrow Agreement pursuant to the Consent Decree in the matter of United States and the State of Michigan v. FMB--First Michigan Bank, or Its Successor, as Trustee of the Mary A. Windolph Trust, Civil Action No. G88-97 CA (W.D. Mich.), relating to the KHI Facility in Holland, Michigan.

FOR HUNTINGTON NATIONAL BANK,
ESCROW AGENT

Date: 3-24-06

BRAD LATOUR
Vice President
Huntington National Bank

APPENDIX A

**ENVIRONMENTAL ESCROW ACCOUNT
CORPORATE ESCROW FEE SCHEDULE**

Fee Schedule
HUNTINGTON BANK
Corporate Trust Services

CORPORATE ESCROW SERVICES

Administration Fee

Subject to terms of the Escrow Agreement and agreement between the Escrow Agent and the Company. Minimum annual fee of \$1,200.

Investment Processing Fee

Huntington Money Market Funds (Daily Cash Sweeps)..... up to 42 basis points*
All other investment purchases \$50 per purchase

** Collected from account income monthly*

Transaction Processing Fees

For each cash receipt item..... \$15
For each disbursement item**
 via check \$15
 via wire \$25

Out-of-Pocket Expenses

All expenses incurred in the course of the escrow, if reasonably required or required in fact by the Company, are the responsibility of the company. A periodic itemized accounting of all expenses is made and billed at cost to the Company.

Extraordinary Expenses

All duties requested of the Escrow Agent which are not expressly set forth in the Escrow Agreement are subject to additional fees. Items deemed necessary will be charged at commercially reasonable rates. All other services must be agreed upon in writing between the Escrow Agent and the Company.